

GREAT NORTHERN RAILWAY COMPANY V. WITHAM [1873] LR 9 CP 16

Court of Common Pleas (England) – 6 November 1873

FACTS

Great Northern advertised for tenders for the supply of iron for a period of twelve months.

Witham tendered to supply the iron required for the period at certain fixed prices and “in such quantities as the company’s store-keeper might order from time to time”.

Great Northern accepted the tender but eventually Witham stopped supplying the iron. Great Northern sued for breach of contract. Witham defended the claim and alleged that the agreement was not an enforceable contract as there was no consideration by Great Northern.

ISSUES

The court had to decide the obligation of a party who submits a tender guaranteeing their ability to provide goods and services at fixed prices when this tender is accepted by the party inviting tenders.

FINDING

There was a sufficient consideration for Witham’s promise to supply the iron, despite Great Northern not being obliged to order any iron.

The Court did say that if Witham had given notice to Great Northern that the fixed prices would no longer apply then it was possible that the obligation to supply the iron at the fixed prices would end, even if the period of the supply arrangement had not ended.

QUOTE

Brett J said:

“So, if one says to another, ‘If you will give me an order for iron, or other goods, I will supply it at a given price;’ if the order is given, there is a complete contract which the seller is bound to perform. There is in such a case ample consideration for the promise. So, here, the company having given the defendant an order at his request, his acceptance of the order would bind them.” – page 19 of [1873] LR 9 CP 16

“I think it would be wrong to countenance the notion that a man who tenders for the supply of goods in this way is not bound to deliver them when an order is given.” – page 20 of [1873] LR 9 CP 16

IMPACT

A person who submits tenders which outline their ability to provide goods and services at set prices must be able to do so when called upon should their tender be accepted.

The Courts deem the contract to be created at the time the tender is accepted.

However, performance of the contract will not take place until the tender is called upon to perform and supply the goods or services. The tenderer however, may be allowed to give reasonable notice to withdraw their set prices, and thus withdraw their offer.

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