

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR G. MILES,  
Appellant,  
vs.  
INTERNATIONAL GAME  
TECHNOLOGY,  
Respondent.

No. 42730

**FILED**

**MAY 29 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a gaming dispute. Eighth Judicial District Court, Clark County; David Wall, Judge.

When the reels on the slot machine that appellant Arthur G. Miles was playing on December 15, 2001, concluded spinning so that the bottom portion of three Quartermania symbols were aligned on the payline, no bells rang and no lights flashed, the machine did not lock out, and respondent International Game Technology's (IGT's) system monitor did not register a jackpot. Miles nevertheless claimed that he won a progressive jackpot.

After investigating the dispute, a Nevada Gaming Control Board investigative agent recognized that the Quartermania symbols "slightly dissect[ed]" the payline. Nevertheless, the agent concluded that Miles was not entitled to a payout because the system monitor did not register a jackpot, game recall showed a non-winning alignment, the Quartermania symbols were not centered on the payline, and the machine did not lock out or activate the bells. After reviewing Miles' petition for

reconsideration, the Nevada Gaming Control Board agreed, essentially concluding that the random selection process must be examined in determining whether an unclear alignment resulted in a win. The district court denied Miles' subsequent petition for judicial review; consequently, Miles appeals.<sup>1</sup>

A Gaming Control Board decision is entitled to great deference by this court.<sup>2</sup> Accordingly, while we examine purely legal questions de novo,<sup>3</sup> we, like the district court, will not disturb a Board decision unless our review of the record indicates that the appellant's substantial rights were prejudiced by the decision because it is unsupported by any evidence whatsoever, or is arbitrary, capricious, or contrary to the law.<sup>4</sup>

In Sengel v. IGT,<sup>5</sup> this court pointed out that the public has constructive knowledge of the gaming regulations.<sup>6</sup> Accordingly, the court determined that the public is presumed aware that, as provided in Nevada Gaming Commission Regulation (NGCR) 14.040(2), game results are determined by a random selection process "and that any result or

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<sup>1</sup>Miles' May 14, 2007 motion for leave to file a supplemental submission is granted; the clerk of this court shall detach and file the supplement attached to Miles' motion as Exhibit A. See NRAP 31(d).

<sup>2</sup>See Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000); Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994).

<sup>3</sup>Redmer, 110 Nev. at 378, 872 P.2d at 344.

<sup>4</sup>Sengel, 116 Nev. at 569-70, 2 P.3d at 260-61; Redmer, 110 Nev. at 378, 872 P.2d at 344; NRS 463.3666(3).

<sup>5</sup>116 Nev. at 572-73, 2 P.3d at 262 (citing NGCR 14.040).

<sup>6</sup>Id.

apparent result caused by any other means would be invalid.”<sup>7</sup> The parties agree that the game result at issue in this matter was determined by a random selection process—in particular, the random number generator—and that no malfunction occurred.<sup>8</sup> The parties also concur that, internally, the random number generator did not produce a winning combination.

Miles nonetheless insists that he is entitled to the jackpot because the randomly selected numbers were visually displayed by reel symbols aligned on the payline. Miles makes three main arguments: (1) the Board’s decision is contrary to the law because it conflicts with gaming regulations; (2) the Board’s decision goes against the contractual language printed on the machine; and (3) the Board’s decision is arbitrary because it is inconsistent with prior Board precedent.

First, Miles points to NGCR 14.040(3), which provides that gaming devices “[m]ust display an accurate representation of the game outcome. After selection of the game outcome, the gaming device must not make a variable secondary decision which affects the result shown to the player.” Miles asserts that this language requires that the display, and not the “virtual” random numbers, be used to determine the outcome of a game.

The regulation’s plain language does not support Miles’ position, however. NGCR 14.040(3) requires gaming devices to display

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<sup>7</sup>Id.

<sup>8</sup>Miles and IGT stipulated below that (1) “[t]he subject machine uses a random selection process to determine the outcome of each play of a game,” and (2) “[t]he subject machine uses a random number generator device to determine the outcome of each game.”

accurate “representations” of game outcomes. Because the definition of “representation” refers to “one that represents,”<sup>9</sup> and “represent” is defined, among other things, as “to serve as a sign or symbol of,” “to serve as a counterpart or image of,” and “to take the place of,”<sup>10</sup> a “representation” of the game’s outcome clearly is not the game outcome itself.

To determine the game outcome, as Miles conceded, one must turn to the random number generator, which is a device that randomly selects number values.<sup>11</sup> Thus, the numbers randomly selected are not a “variable secondary decision” made after the game outcome has been selected, but rather, they are the original game outcome, and the display merely represents this outcome. Accordingly, even though an inaccurate display might violate NGCR 14.040, it does not determine game outcome. In the matter before us, the display represented the game outcome based on the original, random number generator, decision, not on any secondary decision.

Moreover, the dictionary defines “display” as “to put . . . before the view,” “to make evident,” or “to exhibit ostentatiously.”<sup>12</sup> Thus, while a non-malfunctioning machine “displays” game outcome, in part, by the payline alignment, the machine also “displays” game outcome by other

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<sup>9</sup>Merriam Webster’s Collegiate Dictionary 993 (10th ed. 1997).

<sup>10</sup>Id.

<sup>11</sup>NGCR 14, attachment 1(19).

<sup>12</sup>Merriam Webster’s Collegiate Dictionary 335 (10th ed. 1997).

indicators, including flashing lights and sounding bells.<sup>13</sup> Here, as Miles admits, none of those indicators occurred. Thus, the Board's finding that "no outward visible or audible signs of a jackpot existed," as the candle light did not flash and the progressive meter did not lock out, is supported by evidence, and its decision comports with the law and was made within its statutory authority.

Second, Miles argues that the "contract terms" provided on the face of the machine require that the symbols be viewed as a winning alignment. He then notes that the machine stated that the progressive jackpot is won when three Quartermania symbols appear "[o]n payline with two coins played." The machine also provided "[p]lays on center line only." Miles argues that since contracts, especially adhesion contracts, must be interpreted against the drafter, and since this contract contained no terms requiring the symbols to be centered on the payline, any evenly-aligned symbols that touch the payline constitute a win. Because the symbols in his game were "on the payline," Miles argues, he is entitled to the win.

But, as both Miles and IGT point out, the contract terms also required that no payment be made until the win is "validated." The Board concluded that this term meant that "[t]he promise to pay the jackpot . . . is specifically conditioned on IGT validating the win." Although Miles claims that this conclusion is "double talk of the first magnitude" because it leads to IGT regulating the Board, the Board heard testimony from IGT's firmware engineering vice-president indicating that the only way to validate a win is by having a casino attendant recall the last game and

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<sup>13</sup>See Sengel, 116 Nev. at 571, 2 P.3d at 261.

number of credits played and checking it against the virtual random numbers chosen for that game. According to the vice-president, the central system report, game software, and audible and other visual data are also examined before a win is verified. As this testimony comports with the Board's valid conclusion that the game outcome is determined by the random number generator, it supports the Board's conclusion that no contractual terms have been violated here. Accordingly, Miles' assertion that the "validation" merely refers to whether a patron is of legal age, that no tampering or malfunctioning of the game occurred, and that the terms of the offer have been met, does not fully explain the process. When viewed in light of the gaming regulations discussed above, the Board's interpretation of the "validation of win" requirement is legally sufficient and supported by evidence.

Finally, Miles argues that in rendering its decision, the Board arbitrarily and capriciously departed from its policy of looking at the display to determine game outcome, citing the 2000 Board decision in Gutierrez v. Sand Regency, Case No. 99-1432R. Agency decisions may be arbitrary and capricious when they depart from established custom or policy without a reason for doing so.<sup>14</sup> Here, however, the Board's

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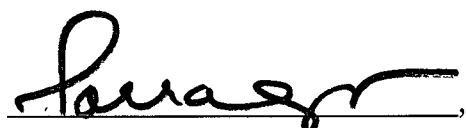
<sup>14</sup>See, e.g., Kmart Corp. v. County of Stearns, 710 N.W.2d 761, 770-71 (Minn. 2006) ("Obviously, agency decisions based on its own policies, rules and regulations should have greater precedential effect, but even here an agency is not arbitrary or capricious when it reverses a past policy on a reasonable basis."); see also id. at 772-73 (Anderson, J., concurring in part and dissenting in part) (listing several state and federal cases recognizing that "while agencies . . . are not bound to respect their own precedent to the same degree as a judicial court, neither can they cavalierly disregard their own precedent," and when they do so, they will be found to have acted arbitrarily and capriciously). See also Desert


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resolution is not inconsistent with Gutierrez, since here, unlike in that case, the Board found that the subject machine bore no signs of a jackpot, and that finding, as noted above, is supported by evidence in the record. And even if the Gutierrez decision reflected a Board policy of interpreting NGCR 14.040(3) to require reliance on a machine's visual display over its virtual readout, the Board provided reasons for departing from that policy because unlike the Gutierrez machine, Miles' machine required validation of any win. As a result, Miles has not shown that the Board's decision was arbitrary and capricious.

As the Board's decision was based on evidence and not legally erroneous,<sup>15</sup> we affirm the district court's order denying judicial review.

It is so ORDERED.

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

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Irrigation, Ltd. v. State of Nevada, 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997) (recognizing that administrative agencies are not bound by stare decisis).

<sup>15</sup>We have considered all of Miles' other appellate arguments, including those implicating Nevada gaming policy, and we determine that none of them warrant reversal.

cc: Hon. David Wall, District Judge  
Ara H. Shirinian, Settlement Judge  
Frank L. Slaughter  
White Law Chartered  
Lionel Sawyer & Collins/Las Vegas  
Eighth District Court Clerk