

**NGFA Ag Transportation Symposium
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NGFA RAIL ARBITRATION – Alternative Dispute Resolution for the Industry



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NGFA Rail Arbitration



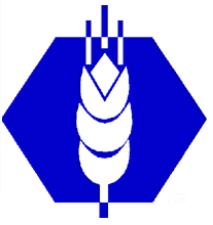
- Aug. 1998 – landmark agreement
 - NGFA and railroads agree to compulsory arbitration of certain disputes
- Over a decade later ... it stands as a uniquely practical and effective alternative for dispute resolution

Who is Eligible to Participate?



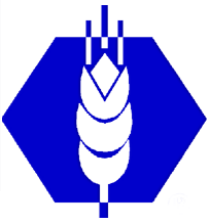
- All Active and Associate/Trading Members ... unless they withdraw
- Includes:
 - All Class I railroads
 - Many shortline/regional railroads
 - Most NGFA-member grain, feed and processing companies
- At least one party must be a member
- Only members can compel arbitration

Arbitrable Disputes



- Limited to those involving grain and feed, including commodities designated under 54 STCC categories
- Any type of dispute by consent [Rule 2(a)]

Compulsory Arbitration Disputes



[Rule 2(b)]

- 1) demurrage rules or terms
- 2) misrouting of loaded cars
- 3) receipts/bills of lading under 49 USC 11706 (e.g., Carmack disputes/loss & damage)
- 4) unless excluded, transportation contracts (49 USC 10709)
- 5) special car or equipment program rules (e.g., COTs, vouchers, pool contracts)
- 6) general car distribution rules
- 7) mishandling of private cars
- 8) leases of railroad property (with limitations)
- 9) property damage re: sidetrack agreements

Arbitrable Disputes



- (10) (A) Disputes involving reasonableness of published rules and practices (including demurrage) otherwise subject to STB jurisdiction under 49 USC 10702(2)
- (B) except (i) rates or charges, including rate levels and spreads; (ii) reciprocal switching; (iii) credit terms; (iv) car allocation/distributions rules or practices.

– **NGFA Rail Mediation**

Arbitrated Disputes: Published



- \$148K claim for mishandling private car of flour – award denied for insufficient evidence of mishandling
- \$11K dispute over responsibility for “lost” car of wheat – strong presumption by shipper that car was tendered loaded
- Dispute over duration of quoted contract rate – evidence favored shipper’s contention that intended duration for one-full year; incumbent upon carrier to clarify any ambiguity
- \$10K claim for loss of value to carload due to missing seals – strong evidence that car properly sealed when released by shipper

Arbitrated Disputes: Published



- \$500 claim for misappropriation of private railcars – award denied based on insufficient verification of ownership and economic damages
- \$95k claim for loss resulting from derailment – replacement value awarded
- [2 cases] Dispute whether contract had been offered and accepted between the parties – evidence supported railroad's contention that no contract was formed; \$250k awarded to railroad for moneys withheld
- \$134K claim for loss from alleged presence of foreign substances in corn rail car – award denied based on contract terms and "totality of circumstances"

Other Recent Cases Filed



- Misdelivery of railcars; bills of lading issues*
- “Unreasonable practices”
- Derailments
- Range: \$2K - \$64K
- Typical settlement within 1-2 months from filing
- 1 of 15 reached argument phase

NGFA Rail Arbitration



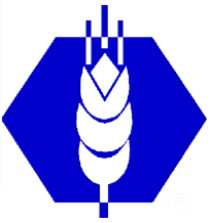
Preamble: "In all cases, rail users and railroads are encouraged to make reasonable efforts to resolve matters before pursuing formal dispute resolution procedures."

How Rail Arbitration Works



- NGFA's 100-year old Arbitration System
- NGFA Arbitration Rules
 - Costs, procedures for arguments, hearings, appeals, panel appointments, and published decisions ...

The Decision Makers



- Three per committee – never just one
- Volunteers (i.e. unpaid)
- Experts (*“prominent people experienced in the type of trade or transaction involved”*)
- Carefully screened for bias, partiality, etc.
- Subject to challenge by the parties

Case Activity: Panels Appointed



StatesRail	West Central	Canadian National
Norfolk Southern	Southern States	The Andersons
Perdue Farms	BNSF	Canadian Pacific
J&J Commodities	Ohio Central RR	Southeastern Mills
Union Pacific	CHS	Foster Farms
Bunge NA	Canadian National	CSX Transportation
CSX Transportation	CGB	Bunge NA
Cargill	Canadian Pacific	Red River Valley & W. RR
<u>Appeal</u> : Milbank Mills	KSC	Ritzville Warehouse
	Canadian Pacific	Cedar American

Rail Arbitrators Appointed



Lynn Anderson, Cedar American	George Aspatore, NS
Mike Bilovesky, KSCR	Steve Bobb, BNSF
Rick Calhoun, Cargill	Sharon Clark, Perdue
Brent Dornian, CP	Diane Duren, UP
Jeff Edwards, J&J Commodities	Roger Fray, West Central
Steve Gehrt, CN	Betsy Hall, The Andersons
Mike Haeg, Statesrail	Kyle Hancock, CSX
Judy Harrower, CP	Dan Mack, CHS
Tim McNulty, CSX	Mike Mohan, CN
Larry Schwendiman, Foster Farms	W. Strawn, Ohio Central RR
Charles Threlkeld, CGB	Darrell Wallace, Bunge
Ryan Warner, Bunge	Janet Weiss, CP
Chris Wheeler, Southeastern Mills	J. Whitaker, Southern States
Sharon Trudell, Red River Valley & Western RR	

NGFA Rail Arbitration Rules



- To “amend and supplement the NGFA (non-Rail) Arbitration Rules”
- Party eligibility
- Disputes covered/excluded
- Covered commodities/products
- Jurisdictional amount
- Filing deadline
- Substantive law unaffected
- Real estate leases
- Amendments: Rail Arbitration Rules Committee

Rail Arbitration Rules Committee



NGFA Rail Arbitration Rules Committee

- 14 persons (at least 7 railroads)
- Must approve any rules changes

Chair: Kyle Hancock, CSX Transportation

Mike Adams, Canadian Pacific

Mike Bilovesky, KCS

Sharon Clark, Perdue

Paul Hammes, Union Pacific

Steve Gehrt, Canadian National

Lynn Hiser, Tate and Lyle

Mark Huston, Louis Dreyfus

Kevin Kaufman, BNSF

John Kraemer, Norfolk Southern

Charles Threlkeld, CGB

Bill Krueger, Lansing Trade Group

Terry Voss, Ag Processing

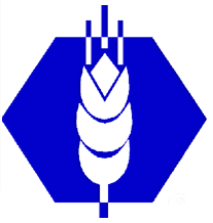
Darrell Wallace, Bunge North America

Rail Arbitration Committee Activity



- Clarified jurisdictional amount provision
- Expanded designated commodities
- Expanded committee representation
- Extended filing deadline
- ... partnership approach

Observations



- Case activity – manageable and stable
- Settlements – pre- and post- initiation of arbitration process
- Professionalism
- Procedural satisfaction