NGFA Rail Arbitration Rules

These Rail Arbitration Rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association (NGFA) in 1998. Rail Arbitration is not intended to replace private negotiation and resolution of disputes by parties. In all cases, rail users and railroads are encouraged to make reasonable efforts to resolve matters before pursuing formal dispute resolution procedures.

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Rule 1. Description and Purpose

These Rail Arbitration Rules amend and supplement the NGFA Arbitration Rules, which along with these supplementary rules, shall constitute the rules applicable to arbitration of disputes involving the transportation of grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated in Rule 2(D) by a railroad in North America when one or more of the parties to the dispute is a railroad. These Rules and their application shall be enforceable under the provisions of the Federal Arbitration Act at 9 U.S.C. §2, as now existing or hereinafter amended.

Rule 2. Matters to be Arbitrated

(A) A railroad and a rail user may agree to submit any dispute to arbitration before NGFA where at least one party to the dispute is a NGFA member.

(B) Unless either NGFA member that is involved in a dispute has elected to withdraw from these Rail Arbitration Rules, as provided for in Article III, Section D(3) of the NGFA Bylaws, NGFA members shall arbitrate the following disputes arising between railroads and rail users involving rail transportation in the United States upon the filing of a complaint with the NGFA Secretary:

(1) disputes involving the application of a railroad's demurrage rule(s) or term(s);

(2) disputes involving the misrouting of loaded rail cars or locomotives;

(3) disputes arising under receipts and bills of lading governed by 49 U.S.C. §11706 (e.g., Carmack disputes such as loss and damage claims, etc.);

(4) except as otherwise mutually agreed, disputes arising from a contract between the parties for transportation between one or more rail carriers with one or more purchasers of rail services that has become effective under 49 U.S.C.§ 10709;

(5) disputes involving the application of a railroad's special car or equipment program rules (e.g., certificates of transportation, vouchers, pool contracts, etc.);

(6) disputes involving the application of a railroad's general car distribution rules;

(7) disputes involving the mishandling of private cars or locomotives;

(8) disputes involving a lease by a rail user of real property owned by a railroad or railroad affiliate, subject to the limitations set forth in Rule 4;

(9) disputes involving property damage claims arising under or related to a rail sidetrack agreement, whether the sidetrack is owned and/or operated by a rail user member of the NGFA, a railroad or third party. The arbitrators shall decide such a case based upon the express terms of such sidetrack agreement between the parties unless the arbitrators find that the relevant liability provision(s) in such agreement is/are commercially unreasonable. In that event, the arbitrators may decide the case based upon what they find to be commercially reasonable under the facts of the particular case;

(10) (a) Except as provided in paragraph (C) of this rule, specific railroad-rail user disputes involving the reasonableness of a railroad's published rules and practices as applied in the particular circumstances of the dispute on matters related to transportation or service (including demurrage), that otherwise would be subject to the unreasonable practice jurisdiction of the Federal Surface Transportation Board under 49 U.S.C. §10702(2).

(b) In determining whether the application of a particular rule or practice is reasonable, the arbitrators should consider, among other things, (i) the practical effects on the operation of both the railroad and rail user involved, and (ii) whether the rule or practice, or its absence, has a disparate negative impact on either the rail user or the railroad.

(C) Disputes involving the establishment or modification of the following are not subject to arbitration hereunder: (i) a railroad's rates or charges, including rate levels and rate spreads, (ii) whether an industry or station is or should be open or closed to reciprocal switching, (iii) a railroad's credit terms, or (iv) a railroad's car allocation/distribution rules or practices.

(D) The disputes for which a party to the "Agreement on Predispute Consent to NGFA Arbitration" is obligated to arbitrate under paragraph (B) above shall be limited to those involving grain, oilseeds, feedstuffs and/or products derived from grain or oilseeds and designated by the following Standard Transportation Commodity Code (STCC) definitions:

STCC	Description
01 131	Barley
01 132	Corn
01 133	Oats
01 134	Rough Rice
01 135	Rye
01 136	Sorghum Grains
01 137	Wheat
01 139	Grain, NEC
01 141	Cottonseeds
01 142	Flaxseeds
01 144	Soybeans
01 149	Oil Kernels, Nuts or Seeds
01 152	Popcorn
01 159	Seeds
01 191	Fodder Hay or Roughage
01 341	Beans, Dry Ripe
01 342	Peas, Dry
01 343	Cowpeas, Lentils or Lupines
01 992	Alfalfa Meal
20 139 45	Grease, Animal, NEC
20 143	Grease/Inedible Tallow
20 144	Animal Protein Products
20 411	Wheat Flour
20 412	Wheat Bran, Middlings
20 412 90	Mill Run
20 413	Corn Meal or Flour
20 414	Rye flour
20 416 10	Oat flour
20 418	Grain Mill By-Products
20 419	Flour or Other Grain Mill Products, NEC
20 421	Prepared Feeds
20 442 15	Rice Flour
20 442 20	Rice Bran
20 449	Milled Rice, Rice By-Products, Etc.
20 461	Corn Syrup
20 462	Corn Starch
20 463	Corn Sugar
20 464	Dextrine, Corn, Tapioca or Other
20 465	Corn Oil
20 466	Other Starch
20 467	Wet Process Corn or Similar Mill By-Products
20 469	Wet Process Corn Milling or By-Products
20 471 10	Bird Food or Seed, Domestic
20 511	Bakery Products/Sweepings
20 616 25	Molasses
20 619	Beet Pulp Pellets
20 823	Spent Grains
20 831	Malt
20 832	Malt Flour or Sprouts

STCC	Description
20 839	Malt Products
20 859	Distillers By-Products
20 911 10	Cottonseed Oil
20 914	Cottonseed Meal or By-Products
20 921	Soybean Oil
20 923	Soybean Meal and Hulls
20 923 36	Soapstock (for feed use only)
20 933	Nut or Vegetable Oils
20 933	Rice Oil
20 939	Oil Seed Meals and By-Products, NEC
20 939 17	Peanut Meal
20 942	Fish Meal
20 961 31	Used Cooking Oil
28 126 30	Limestone (for feed use only)
28 184 19	Ethanol (grain and products derived from grain) [also 28 184 45; 28 184 46; 28 184 47]
28 184 91	Biodiesel (grain and products derived from grain) [also 28 994 15; 28 994 16; 28 994 25; 28 994 40]
28 185	Glycerin
28 199 10	Dical and Monocal Phosphate
28 991 12	Salt (for feed use only)
28 994	Distillate (fatty acids)
37 422	Freight Cars Moving on Own-Wheels

The 5-digit STCC categories listed above shall be deemed to include all commodities with codes derived from the 5-digit categories. For example, the STCC 20-939 shall be deemed to include STCC 20-939-39 (Rapeseed or Canola Meal).

(E) A party against whom a complaint has been filed may file a counterclaim or offset, and assert any defense it may have against the plaintiff arising out of the same transaction upon which the complaint is based so long as such claim or defense is one of the issues included in paragraph (B). The NGFA Secretary may, upon application of one of the parties, stay an arbitration pending the resolution of non-arbitrable issues if the NGFA Secretary is satisfied that such a stay will not unfairly prejudice the other party and provided that the applicant is not in default in the arbitration proceedings.

(F) A party shall not be obligated to arbitrate claims seeking more than $600,000 per occurrence, exclusive of interest and legal costs. A party shall not be obligated to arbitrate personal injury claims.

(G) The original complaint in connection with any disputed matter proposed for arbitration under these Rail Arbitration Rules must be filed with the NGFA Secretary within 12 months after the claim arises, or within 90 days after a claim is first rejected by the railroad, whichever occurs last; provided, however, in no event shall arbitration be brought more than 15 months after a claim arises.

Rule 3. Substantive Law Unaffected

These rules do not change substantive law and thus shall not be construed as either creating or limiting the general or specific substantive law applicable to disputes arising between parties to an arbitration case. All decisions rendered pursuant to these rules shall be binding upon the parties as provided for in the NGFA Arbitration Rules, subject to vacation only on such grounds as are set forth in the Federal Arbitration Act at 9 U.S.C.§ 10, as now existing or hereinafter amended.

Rule 4. Real Estate Leases

Real estate leases subject to arbitration under Rule 2(B)(8) of these rules and the standards and limitations applicable to arbitration of such disputes, are as follows:

(A) A dispute involving the application of a lease of real property owned by a railroad or railroad affiliate ("Rail Lessor"), on the one hand, and leased by a rail user member of NGFA which operates a grain elevator, feed mill, processing plant or other agricultural facility, receiving or entitled to receive rail service as provided herein, on the leased premises ("Facility Lessee"), on the other, except for specific disputes arising under Chapter 109, 111 or 113 of Subtitle IV, Part A, Title 49 U.S.C. The arbitrators shall have no authority to modify or refuse to apply the existing terms of a lease in resolving such disputes. Railroad affiliate means any person which succeeds to the real property interest of a Rail Lessor after this provision takes effect if that person continues to provide rail service to a Facility Lessee which is subject to Subtitle IV, Title 49 U.S.C.

(B) A dispute involving termination, expiration or renewal of a lease of real property owned by a Rail Lessor and leased by a Facility Lessee, except for specific disputes arising under Chapter 109, 111, or 113 of Subtitle IV, Part A, Title 49 U.S.C., subject to the following:

(1) The arbitrators shall have no authority to resolve a dispute concerning such termination, expiration, or renewal where:

(a) The lease covers real property which the Facility Lessee has not used to receive or forward rail shipments for a continuous period of 12 months or more, unless such disuse has been caused by any act of force majeure or unwillingness or inability of the serving railroad to provide rail service when reasonably requested to do so;

(b) Notwithstanding the provisions of Rule 4(B)(1)(d), the Facility Lessee is in material default under the terms of the lease, and such default either has not been cured after reasonable notice, or as required by the lease. (This, however, does not preclude the arbitration of the question of whether the Facility Lessee is in material default);

(c) The Rail Lessor's title to the leased premises is reversionary and the reversion has occurred;

(d) The dispute involves a matter other than rental or liability terms;

(e) The Rail Lessor provides an affidavit verifying that it intends to use the premises for rail or rail-related operations that justify non-renewal or termination of the lease; or

(f) The Rail Lessor sells the premises on terms that are the same or more favorable to the Rail Lessor than sale terms presented in writing by the Rail Lessor to the Facility Lessee and not accepted in writing by the Facility Lessee within 30 days.

(2) In the event a Rail Lessor and a Facility Lessee are unable to agree on the rental rate for renewal of a lease of real property, the arbitrators may establish the rental rate. However, the arbitrators may not require the Rail Lessor to accept a rental rate which is less than the fair market rental value of the leased premises based on the highest and best use, but not including the separate value of tenant improvements attributable to the current tenant.

(3) In the event the parties fail to agree to the liability terms proposed for renewal of a lease of real property, either party may submit the liability terms proposed for review to NGFA arbitration. The arbitrators may reject and revise the terms proposed to the extent that they are commercially unreasonable (giving consideration, but not limited, to the nature of the Facility Lessee's operations, the rental rate relative to potential liabilities assumed by each of the parties, and customary commercial real estate practices), or unconscionable. The arbitrators shall not require a party to bear any liability for environmental contamination caused by the other party.

(4) The arbitrators may not require renewal or extension of a lease of real property for a term exceeding 5 years. If, at the expiration of such lease, the Rail Lessor and Facility Lessee are unable to agree on the rental or liability terms for renewal or continuation of the lease, either party may seek prescription of such terms under this paragraph (B) of Rule 4.

(5) The arbitrators in making a decision on the renewal or extension of a lease of real property shall consider whether the Rail Lessor has demonstrated other uses for the property which justify a refusal by a Rail Lessor to renew or extend a lease.

Rule 5. Amendments

The NGFA chairman shall appoint a Rail Arbitration Rules Committee comprised of up to 18 persons who are officers, partners or employees of NGFA-member railroads and rail users. At least one-half of the members of the committee shall be representatives of railroads. It shall be the duty of the committee to consider amendments to the Rail Arbitration Rules and report its recommendations to the membership at any annual meeting or to the NGFA Board of Directors. Changes to these rules shall be approved by the Rail Arbitration Rules Committee before being considered for approval by the NGFA Board or the membership. All Transportation railroad members of the association shall be entitled to vote on changes to the Rail Arbitration Rules at any annual meeting considering the adoption, ratification or amendment of such rules.

NGFA Rail Arbitration Rules

Rule 6. Arbitration Service Fees

The arbitration service fees paid by a disputant under these Rail Arbitration Rules shall be the same as those set forth in the NGFA Arbitration Rules, except that the fees paid by nonmembers under these rules shall be 150% of the fees paid by NGFA members.