

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 730 (Sub-No. 1)

REVISIONS TO ARBITRATION PROCEDURES

Digest:¹ The Board adopts its roster of arbitrators who are available to resolve rail rate and practice complaints through the Board’s arbitration process.

Decided: February 22, 2017

Under Section 13 of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), codified at 49 U.S.C. § 11708, Congress directed the Board to “promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints” that are subject to the Board’s jurisdiction. In May 2016, the Board issued a Notice of Proposed Rulemaking proposing to modify its existing arbitration procedures so that its arbitration regulations, set forth at 49 C.F.R. pt. 1108 and § 1115.8, conform to the requirements of the STB Reauthorization Act. Revisions to Arbitration Procedures, EP 730 (STB served May 12, 2016). Section 11708(f) provides that, unless parties otherwise agree, an arbitrator or panel of arbitrators shall be selected from a roster maintained by the Board. Accordingly, the Board’s rules establish a process for creating and maintaining a roster of arbitrators. See Revisions to Arbitration Procedures (Final Rule), EP 730, slip op. at 3-4 (STB served Oct. 11, 2016).

By decision served December 2, 2016, the Board sought applications from all interested persons who wish to be considered for inclusion on the roster. The Board has assessed each applicant’s qualifications to determine individuals who can ably serve as arbitrators based on the criteria established by the Board in its Final Rule, now codified at 49 C.F.R. § 1108.6(b). Based on these assessments, the Board adopts and issues its roster of arbitrators, which is appended to this decision. The roster will be published on the Board’s website, pursuant to § 1108.6(b), at <https://www.stb.gov/stb/litigationalternatives/CurrentArbitration.html>. This roster will be updated every year and may be modified by the Board at any time through a no-objection vote.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

It is ordered:

1. The Board adopts the roster of arbitrators appended to this decision.
2. This decision is effective on the day of service.

By the Board, Board Members Begeman, Elliott, and Miller.

ROSTER OF ARBITRATORS

The following is the list of persons available and qualified to be arbitrators based on the criteria established under 49 C.F.R. § 1108.6. The information provided herein is based on applications filed by each arbitrator. These applications are available on the Board's website (www.stb.gov) under Docket No. EP 730 (Sub-No. 1). The roster will be updated every year and may be modified by the Board at any time through a no-objection vote.

Donald I. Baker

- Attorney, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, (202) 663-7820, dbaker@bakerandmiller.com
- Counsels railroad clientele on matters involving antitrust, rail transportation, and economic regulation.
- Served as arbitrator in a variety of antitrust and rail disputes; authored articles on arbitrating complex disputes; member of the Center for Public Resources Panel of Distinguished Neutrals; appointed by the Center of Public Resources Legal Program to Develop Alternatives to Litigation; designated as an arbitrator by the American Arbitration Association.
- Fee: \$425/hour, but could potentially be adjusted by an agreement with the parties.

David C. Barrett, Jr.

- Attorney, Barrett, Easterday, Cunningham & Eselgroth LLP, 7259 Sawmill Road, Dublin, OH 43016, (614) 210-1840, dbarrett@farmlawyers.com
- Represents agricultural producer and agribusiness clients in matters including corporate governance, commercial transactions, commercial civil litigation, mediation, and arbitration; former member of the National Grain and Feed Association (NGFA) (in-house legal counsel, national secretary).
- Administrator of the NGFA Arbitration System; worked to establish the NGFA Rail Arbitration Rules for arbitration of specified rail issues; represented producer and agribusiness firms in arbitration before NGFA and the American Arbitration Association; member of the arbitration panel maintained by the National Futures Association; served as a mediator in a variety of cases, including court-ordered mediation cases in Ohio; completed the London-based Grain and Feed Trade Association's *Gafta* Trade Foundation Course on international grain contracts and arbitration.
- Fee: \$420/hour + costs and expenses incurred in serving as an arbitrator.

Sharon G. Clark

- SVP Transportation & Regulatory Affairs, Perdue AgriBusiness LLC, 6906 Zion Church Road, P.O. Box 1537, Salisbury, MD 21802, (410) 341-2609
- Experience in the agricultural industry, including grain merchandising, commodity trading, transportation, and regulatory affairs; former member of the Board's Railroad-Shipper Transportation Advisory Council; member of organizations/associations, including the National Grain and Feed Association (NGFA), National Grain Car Council, National Oilseeds Processors Association, North America Freight Car Association, and the National Freight Transportation Association.
- Member of NGFA Rail Arbitration Committee, member of task force that originally crafted NGFA arbitration rules; member of NGFA Arbitration Appeals Panel; arbitrator on NGFA arbitration cases; chair of arbitration for NGFA case; member of a NGFA task force that performed a comprehensive review and overhaul of the NGFA Arbitration procedural rules.
- Fee: \$500/hour + expenses

John D. Heffner

- Attorney, Strasburger & Price LLP, 1025 Connecticut Ave., N.W., Suite 717, Washington, DC 20036, (202) 742-8607, John.Heffner@strasburger.com
- Represents short line and regional railroads and railroad-related clients in commercial and transactional matters involving the purchase, sale, and financing of railroads, railroad lines, and railroad equipment.
- Represented clients in commercial disputes conducted under the auspices of the American Arbitration Association and the Association of American Railroads; represented clients in private mediations and mediations conducted by the Board.
- Fee: \$400-500/hour depending on the matter

Lynn Hiser

- President, Hiser Logistics, LLC, 4465 Ruch Road, Oakley, IL 62501, (217) 454-9331, lynn.hiser@outlook.com.
- Experience in rail transportation as a shipper and payer of freight on Class I railroads and short line railroads; negotiated disputes with railroads involving rates and/or service, in addition to managing private railcar fleets of covered hoppers and tank cars; member of organizations/associations, including the National Grain and Feed Association (NGFA) Shipper-Receiver Committee, North America Freight Car Association, National Industrial Transportation League Rail Transportation Committee, the National Freight Transportation Association, and the Board's National Grain Car Council.
- Served on the NGFA arbitration committee; chairman of a rail transportation-related arbitration case.
- Fee: \$300/hour + travel expenses.

James E. Howard

- Attorney, James E. Howard LLC, 70 Rancho Road, Carmel Valley, CA 93924, (831) 659-4112, jim@jehowardlaw.com

- Represents rail carriers and other clients with interests in rail transportation matters, including regulatory issues before the Board, transactional matters involving sales and acquisitions of rail assets and litigation.
- Member of the American Arbitration Association commercial arbitration panel; served as arbitrator in transportation cases, including car hire disputes; represented clients in arbitration and mediation proceedings.
- Fee: \$300/hour

Fritz R. Khan

- Attorney, 1177 22nd Street, NW (#5B), Washington, DC 20037, (202) 362-0320, xiccgc@gmail.com
- Represented rail carriers and shippers.
- Organized and managed Transportation Arbitration and Mediation, P.L.L.C., a body designated to arbitrate disputes of the Transportation Intermediaries Association and the Commodity Classification Standards Board of the National Motor Freight Association; served as arbitrator in several proceedings.
- Fee: \$400/hour

Paul H. Lamboley

- Attorney/Arbitrator/Mediator/Consultant, Law Offices of Paul H. Lamboley, 575 Forest Street, Suite 200, Reno, NV 89509, (775) 786-8333, phlamboley@aol.com
- Former Commissioner of the Interstate Commerce Commission; former law practice concentrated on transportation, antitrust, energy, environment, commercial and trade-related issues.
- Serves as a neutral (arbitrator, mediator, referee, hearing officer, short trial judge) in a full-time Alternative Dispute Resolution practice; panel memberships for arbitrator and/or mediator appointments include National Mediation Board, National Association of Railroad Referees, Surface Transportation Board, and American Arbitration Association.
- Fee: \$325/hour or \$2000 per eight-hour day or part thereof, unless otherwise determined, inclusive of travel.

Thomas F. McFarland

- Attorney, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604, (312) 236-0204, mcfarland@aol.com
- Experience in the regulation of rail carriers, working for a rail carrier, a law firm, and as a sole practitioner.
- Served as an arbitrator in disputes between rail carriers and state transportation departments.
- Fee: Flexible, but not to exceed \$195/hour.

Charles D. Nottingham

- Principal, Charles D. Nottingham PLLC, 1701 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20006, (202) 461-2229, chip@chipnottingham.com
- Served in Congress, the Commonwealth of Virginia, the U.S. Department of Transportation, and the Surface Transportation Board; worked in private practice of law and consulting, advising transportation stakeholders on regulatory, legal, legislative, policy and economic matters; areas of expertise include freight rate rail dispute analysis and resolution and unreasonable practice claims in the rail industry.
- As Commonwealth Transportation Commissioner of the Virginia Department of Transportation (VDOT), arbitrated all large construction claim disputes between contractors and VDOT; represented clients in mediation in private practice.
- Fee: \$300-475/hour, depending on the complexity of the matter in dispute and related considerations.

Darrell R. Wallace

- Transportation Consultant, Wallace Transportation Consultants LLC, 17884 Westhampton Woods Drive, Wildwood, MO 63005, (314) 724-6041, drwallace@hotmail.com
- Provided rail and truck service to a number of grain and processing facilities, establishing competitive rates for the movement of those bulk grains and grain products; served as Executive Director of North America Freight Car Association and Chairman of the Board's National Grain Car Council; member of organizations/associations, including the Board's Rail Energy Transportation Advisory Council, the National Freight Transportation Association, National Industrial Transportation League, National Oilseeds Processors Association, National Council of Farmer Cooperatives, and the National Grain and Feed Association (NGFA).
- Served on NGFA's Rail Arbitration Rules; served as arbitrator for NGFA on complaints submitted for arbitration and as Chairman of an NGFA arbitration proceeding.
- Fee: \$300/hour + travel expenses.

Donald W. Wenneker

- Consultant, 930 Bunker Lane, Decatur, IL 62526, (217) 520-6764, donwenneker@gmail.com
- Consultant for the grain and transportation industry; involved with major rail carriers in negotiating rates, service agreements, and equipment leasing; the National Grain and Feed Association (NGFA) member.
- Served as Chair of NGFA's Arbitration Appeals Committee; involved in grain arbitration as both plaintiff and defendant; served as an arbitration panel member and chair of arbitration panels.
- Fee: \$300/hour + travel expenses