

# 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 II, Section 3 (f) 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;

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(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:

<u>STCC</u>	<u>Description</u>	<u>STCC</u>	<u>Description</u>
01 131	Barley	20 416 10	Oat flour
01 132	Corn	20 418	Grain Mill By-Products
01 133	Oats	20 419	Flour or Other Grain Mill Products, NEC
01 134	Rough Rice	20 421	Prepared Feeds
01 135	Rye	20 442 15	Rice Flour
01 136	Sorghum Grains	20 442 20	Rice Bran
01 137	Wheat	20 449	Milled Rice, Rice By-Products, Etc.
01 139	Grain, NEC	20 461	Corn Syrup
01 141	Cottonseeds	20 462	Corn Starch
01 142	Flaxseeds	20 463	Corn Sugar
01 144	Soybeans	20 464	Dextrine, Corn, Tapioca or Other
01 149	Oil Kernals, Nuts or Seeds	20 465	Corn Oil
01 152	Popcorn	20 466	Other Starch
01 159	Seeds	20 467	Wet Process Corn or Similar Mill By-Products
01 191	Fodder Hay or Roughage	20 469	Wet Process Corn Milling or By-Products
01 341	Beans, Dry Ripe	20 471 10	Bird Food or Seed, Domestic
01 342	Peas, Dry	20 511	Bakery Products/Sweepings
01 343	Cowpeas, Lentils or Lupines	20 616 25	Molasses
01 992	Alfalfa Meal	20 619	Beet Pulp Pellets
20 143	Grease/Inedible Tallow	20 823	Spent Grains
20 144	Animal Protein Products	20 831	Malt
20 411	Wheat Flour	20 832	Malt Flour or Sprouts
20 412	Wheat Bran, Middlings	20 839	Malt Products
20 412 90	Mill Run		
20 413	Corn Meal or Flour		
20 414	Rye flour		

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

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 \$400,000 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.

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(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 14 persons who are officers, partners or employees of NGFA-member railroads and rail users. At least 7 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 Associate/Trading 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.

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## **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.

# Rail Mediation Rules of the National Grain and Feed Association Governing Certain Rate Disputes

1. These rules were originally adopted by the Association of American Railroads and the National Grain and Feed Association in August 1998, and first became effective October 1, 1998. Signatory railroads commit to mediation of certain rate issues with NGFA members, unless such commitment is voluntarily withdrawn.
2. Unless the railroad Associate/Trading member has elected to withdraw from these Rail Mediation Rules as provided for in Article II, Section 3 (f) of the Bylaws, NGFA railroad Associate/Trading members consent to confidential mediation with NGFA Active or NGFA Associate/Trading members who are rail users when a dispute arises regarding the following issues involving the rail transportation of agricultural commodities designated by the Standard Transportation Commodity Code (STCC) definitions referenced in Section 2(c) of the Rail Arbitration Rules of the National Grain and Feed Association:
  - a) a dispute involving an allegation of unreasonable discrimination by a rail carrier as to rates charged a rail shipper or receiver for rail transportation;
  - b) a dispute involving an allegation that the switching rates, rules or practices of carriers unreasonably bar access of a rail shipper or receiver to markets.
3. The following shall apply to all mediations conducted pursuant to this agreement:
  - a) The mediation and any statements made in the mediation process shall be treated as confidential;
  - b) All statements made in such a mediation are privileged against use in any other proceeding relating to the dispute, even in cross-examination;
  - c) Notes taken by any person at the mediation must be destroyed at the conclusion of the mediation, except for the notes of any final agreement reached by the parties;
  - d) Any person(s) serving as a mediator will not be called as a witness or be otherwise involved in any ongoing arbitration or litigation, should the mediation not result in a settlement.
4. **Procedure for Initiating Mediation:** ANGFA Active or Associate/Trading member may initiate a request for mediation on one or more of the issues set forth above by filing a request with the NGFA Secretary. Mediation shall mean an informal, nonbinding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the dispute.
5. **Selection of Mediators:** The parties to a mediation may select any mutually agreeable panel member from the list of mediators maintained by NGFA. If the parties cannot agree or have no particular choice of a mediator, then the names and resumes of three (3) available mediators shall be sent to each of the parties, each of whom may strike up to two (2) names from the list. If more than one (1) name remains after each party acts, then the NGFA Secretary shall select the mediator from the remaining names.
6. **Duration of Mediation:** The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation or either party chooses not to continue further.
7. **Costs of Mediation:** The party requesting mediation shall pay a fee of \$500 to the National Grain and Feed Association, which shall accompany the request to mediate. Thereafter, each party shall pay their own expenses plus one-half (1/2) of the expenses of the mediation including the mediator's fees. The mediator selected for the mediation shall disclose the basis for calculating his/her fees and expenses upon request by the NGFA Secretary or any party to a mediation.
8. **Limitations of Actions:** Except as otherwise agreed by the parties, the commencement of a mediation under these rules shall not be deemed to toll the statute of limitations as to the claims being mediated.
9. **Term of Agreement:** This agreement is effective for all mediation requests filed on or after October 1, 1998, for those carriers who have voluntarily agreed. A current list of railroad signatories (as of November 1, 2002) is shown below. This agreement shall continue in effect until terminated by the voluntary withdrawal of individual carriers. Railroads may withdraw from this agreement by giving ninety (90) days notice of such withdrawal. Such withdrawal shall become effective ninety (90) days after receipt by NGFA. The following railroads are signatory to the agreement as of November 1, 2002.

Burlington Northern Santa Fe Railway Co.  
Canadian National-Illinois Central Railroads  
Iowa Interstate Ltd.

Kansas City Southern Railway  
Norfolk Southern Corp.  
Ohio Central Railroad System

Red River Valley & Western Railroad  
Union Pacific Railroad  
WATCO Transportation Services