

SURFACE TRANSPORTATION BOARD

DECISION

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

ROSTER OF ARBITRATORS—ANNUAL UPDATE

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

Decided: February 22, 2021

The Board’s regulations at 49 C.F.R. part 1108 establish a voluntary and binding arbitration process to resolve rail rate and practice complaints that are subject to the Board’s jurisdiction. A panel of arbitrators (or, if the parties agree, a single arbitrator) shall be selected from a roster maintained by the Board. 49 C.F.R. § 1108.6(a). The Board’s rules provide a process for maintaining the roster of arbitrators and provide that the roster will be updated every year. 49 C.F.R. § 1108.6(b).

To begin its annual update of the roster, by decision served December 3, 2020, the Board sought applications from all interested persons who wished to be considered for inclusion on the roster. The Board also requested that current arbitrators who wished to remain on the roster notify the Board of their continued availability and confirm that their biographical information on file with the Board remains accurate and, if not, provide any necessary updates. The Board received notifications of continued availability from six current arbitrators and three submissions from applicants requesting to be added to the roster.<sup>2</sup>

The Board has assessed the applicants’ qualifications in light of the criteria at 49 C.F.R. § 1108.6(b). Based on this assessment and a review of the notifications of continued availability, the Board adopts a revised roster adding the new applicants who qualify under 49 C.F.R. § 1108.6(b) and, where appropriate, updating the existing arbitrators’ biographical information.

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<sup>1</sup> 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. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> One of these submissions, from Gary Hunter, was received prior to the December 2020 decision initiating the annual roster update. Mr. Hunter’s submission does not indicate whether he has any training or experience with arbitration or dispute resolution. Under 49 C.F.R. § 1108.6(b), applicants to the roster “must have training in dispute resolution and/or experience in arbitration or other forms of dispute resolution.” Although Mr. Hunter will not be added to the roster pursuant to this decision, should he file supplemental information, the Board notes it may update the roster at any time.

Five arbitrators who did not notify the Board of their continued availability have been removed from the roster. The revised roster of arbitrators is appended to this decision.

The roster will be published on the Board's website, pursuant to § 1108.6(b). The Board will continue to update the roster annually and may modify the roster at any time through a no-objection vote.

It is ordered:

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

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

## 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., N.W., 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, which 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 and (701) 354-4878, 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.

### **Daniel Elliott**

- Founding Partner, Daniel Elliott PLLC, 2000 Pennsylvania Avenue, N.W., Suite 7000, Washington, DC 20006, (703) 863-9670
- Served as Chairman of the Surface Transportation Board.
- As Associate General Counsel of the United Transportation Union, litigated cases in the federal courts and in arbitration.
- Fee: \$350/hour + expenses.

**Paul R. Hitchcock**

- Transportation consultant and former attorney, 1795 Providence Hollow Lane, Jacksonville, FL 32223, (904) 608-1806, prhitchcock11@gmail.com
- Formerly served as Senior Policy Advisor with Holland & Knight LLP and as General Commerce Counsel, a vice president level position at CSX Transportation, Inc., responsible for matters before the Board, intercarrier arrangements, and all commercial matters involving railroad customers; experience with rate cases, unreasonable practice matters, line rationalization issues, carrier-shipper disputes, intercarrier disputes, and trackage rights agreements and disputes.
- Participated in numerous arbitrations and mediations, including Board-sponsored mediations; taught course in railroad litigation and regulation at Florida Coastal School of Law; participated in the negotiation and writing of the original National Grain and Feed Association Rail Arbitration Rules and participated in several matters resolved under that process.
- All hearings to be conducted through remote meeting technology.
- Fee: Between \$350-\$525/hour, depending on the matter, or as otherwise agreed with the parties.

**James E. Howard**

- Attorney, James E. Howard LLC, 57 Via Buena Vista, Monterey, CA 93940, (831) 324-0233, 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.

**Paul H. Lamboley**

- Attorney/Arbitrator/Mediator/Consultant, Law Office of Paul H. Lamboley, 50 W. Liberty Street, Suite 950, Reno, NV 89501, (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: \$375/hour or \$2000 per eight-hour day or part thereof, unless otherwise determined, inclusive of travel.

**Charles D. Nottingham**

- Principal, Charles D. Nottingham PLLC, 1701 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006, (202) 461-2229, chip@chipnottingham.com
- Served as Chief of Staff and Counsel to Congressman Tom Davis and Congressman Bob Goodlatte, as Associate Administrator of Policy and Government Affairs in the Federal Highway Administration, and as Chairman of 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.

**Charles A. Spitulnik**

- Partner, Kaplan Kirsch & Rockwell, LLP, 1634 I Street, N.W., Suite 300, Washington, DC 20006, (202) 955-5600, cspitulnik@kaplankirsch.com
- Practice focuses on representation of clients in the rail industry, with a long history of representation of various industry-related interests in proceedings at the Board.
- Experience with proceedings and transactions presenting issues involving rail line acquisitions, mergers and consolidations, line rationalization issues, intercarrier disputes, abandonments and trackage rights agreements and disputes.
- Participated in numerous arbitrations and mediations.
- Virtual hearings by electronic media accepted.
- Fee: \$425-525/hour, depending on the matter, or as otherwise agreed with the parties. Daily rate to be negotiated. All reasonable travel expenses to be reimbursed.