

SERVICE DATE – FEBRUARY 14, 2018

SURFACE TRANSPORTATION BOARD

DECISION

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

REVISIONS TO ARBITRATION PROCEDURES

Digest:¹ 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 12, 2018

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. It further provided that, unless otherwise agreed, such arbitrations shall be conducted by an arbitrator or panel of arbitrators selected from a roster maintained by the Board. See 49 U.S.C. § 11708(f). Accordingly, the Board’s rules establish a process for creating and maintaining a roster of arbitrators, which must be updated every year. See Revisions to Arbitration Procedures, EP 730, slip op. at 3-4 (STB served Oct. 11, 2016). By decision served February 23, 2017, the Board adopted and issued its initial roster of arbitrators.

To begin the present annual update of the roster, by decision served December 22, 2017, the Board sought applications from all interested persons who wished to be considered for inclusion on the roster. Additionally, the Board requested that arbitrators who wish to remain on the roster notify the Board of their continued availability and confirm that the biographical information on file with the Board remains accurate and, if not, provide any necessary updates. The Board received notifications of continued availability from 10 arbitrators who wish to remain on the roster.² The Board also received two applications from interested persons who wished to be considered for inclusion on the roster.

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).

² The deadline for filing applications and updates to existing arbitrator biographical information was January 22, 2018. However, due to a lapse in appropriations, the Board was closed on that day. As a result, the Board will accept filings in this docket received by January 23, 2018.

The Board has assessed each new applicant's qualifications in light of the criteria set forth in § 1108.6(b). Based on these assessments and a review of the notifications of availability, the Board adopts a revised roster, adding two new arbitrators and incorporating changes to the biographical information noted by the 10 arbitrators who wished to remain on the roster. Two 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), at <https://www.stb.gov/stb/litigationalternatives/CurrentArbitration.html> (under "Arbitration Procedures"). This roster will continue to be updated every year and may be modified by the Board at any time through a no-objection vote.

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 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, d Barrett@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; provides legal advice as consultant on passenger rail liability.
- 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

James N. Heller

- President, Hellerworx, Inc., 4803 Falstone Ave., Chevy Chase, MD 20815, (301) 654-1980, jamie@hellerworx.com
- Provides consulting services related to transportation, energy, and environmental matters for shippers, rail carriers, investors, associations, and government agencies; formerly provided railcar and transportation management services to small shippers and short line carriers.
- Testified numerous times before arbitration panels in the United States and Canada; appointed twice as an arbitrator.
- Fee: \$450/hour + travel expenses

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.

Paul R. Hitchcock

- Senior Policy Advisor, Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, FL 32202, (904) 353-2000, Paul. Hitchcock@hklaw.com
- Supports attorneys in their representation of Class I and short line railroads and rail customers; formerly served as General Counsel 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.
- Fee: Between \$450-\$600/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 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.

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 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