

Surface Transportation Board

§ 1108.3

parties 30 days after the close of the arbitration's evidentiary phase.

(g) *Interstate Commerce Act* means the Interstate Commerce Act as amended by the ICC Termination Act of 1995 and the Surface Transportation Board Reauthorization Act of 2015.

(h) *Lead arbitrator or single arbitrator* means the arbitrator selected by the strike methodology outlined in § 1108.6(c).

(i) *Monetary award cap* means a limit on awardable damages of \$25,000,000 in rate disputes, including any rate prescription, and \$2,000,000 in practice disputes, unless the parties mutually agree to a lower award cap. If parties bring one or more counterclaims, such counterclaims will be subject to a separate monetary award cap.

(j) *Practice disputes* are disputes involving demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation.

(k) *Statutory jurisdiction* means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

(l) *STB or Board* means the Surface Transportation Board.

(m) *Rate disputes* are disputes involving the reasonableness of a rail carrier's rates.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69414, Oct. 6, 2016]

§ 1108.2 Statement of purpose, organization, and jurisdiction.

(a) *The Board's intent.* The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible. This section provides for the creation of a binding, voluntary arbitration program in which parties, including shippers and railroads, agree in advance to arbitrate certain types of disputes with a limit on potential liability of \$25,000,000 in rate disputes, including any rate prescription, and \$2,000,000 in other disputes unless the parties mutually agree to a lower award cap. The Board's arbitration program is open to all parties

eligible to bring or defend disputes before the Board.

(1) Except as discussed in paragraph (b) of this section, parties to arbitration may agree by mutual written consent to arbitrate additional matters and to a lower amount of potential liability than the monetary award cap identified in this section.

(2) Nothing in these rules shall be construed in a manner to prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes they may have.

(b) *Limitations to the Board's arbitration program.* These procedures shall not be available:

(1) To resolve disputes involving labor protective conditions;

(2) To obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters;

(3) To prescribe for the future any conduct, rules, or results of general, industry-wide applicability;

(4) To resolve disputes that are solely between two or more rail carriers.

Parties may only use these arbitration procedures to arbitrate matters within the statutory jurisdiction of the Board.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69414, Oct. 6, 2016]

§ 1108.3 Participation in the Board's arbitration program.

(a) *Opt-in procedures.* Any rail carrier, shipper, or other party eligible to bring or defend disputes before the Board may at any time voluntarily choose to opt into the Board's arbitration program. Opting in may be for a particular dispute or for all potential disputes before the Board unless and until the party exercises the opt-out procedures discussed in § 1108.3(b). To opt in parties may:

(1) File a notice with the Board, under Docket No. EP 699, advising the Board of the party's intent to participate in the arbitration program. Such notice may be filed at any time and shall be effective upon receipt by the Board.

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(i) Notices filed with the Board shall state which arbitration-program-eligible issue(s) the party is willing to submit to arbitration.

(ii) Notices may, at the submitting party's discretion, provide for a lower monetary award cap than the monetary award caps provided in this part.

(2) Participants to a proceeding, where one or both parties have not opted into the arbitration program, may by joint notice agree to submit an issue in dispute to the Board's arbitration program. The joint notice must clearly state the issue(s) which the parties are willing to submit to arbitration and the corresponding maximum monetary award cap if the parties desire to arbitrate for a lower amount than the monetary award cap that would otherwise be applicable.

(3) Parties to a dispute may jointly notify the Board that they agree to submit an eligible matter in dispute to the Board's arbitration program, where no formal proceeding has begun before the Board. The joint notice must clearly state the issue(s) which the parties are willing to submit to arbitration and the corresponding maximum monetary award cap if the parties desire to arbitrate for a lower amount than the applicable monetary award cap.

(b) *Opt-out procedures.* Any party who has elected to participate in the arbitration program may file a notice at any time under Docket No. EP 699, informing the Board of the party's decision to opt out of the program or amend the scope of its participation. The notice shall take effect 90 days after filing and shall not itself excuse the filing party from arbitration proceedings that are ongoing, or permit it to withdraw its consent to participate in any arbitration-program-eligible dispute associated with their opt-in notice for any matter before the Board at any time prior to the end of the 90 day period before the opt-out notice takes effect.

(c) *Public notice of arbitration program participation.* The Board shall maintain a list of participants who have opted into the arbitration program on its Web site at www.stb.gov. Those parties participating in arbitration only for a

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particular dispute will not be listed on the Board's Web site.

[78 FR 29079, May 17, 2013, as amended at 81 FR 69414, Oct. 6, 2016; 83 FR 15078, Apr. 9, 2018]

§ 1108.4 Use of arbitration.

(a) *Arbitration-program-eligible matters.* Matters eligible for arbitration under the Board's program are: rates; Demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation. Parties may agree in writing to arbitrate additional matters on a case-by-case basis as provided in paragraph (e) of this section.

(b) *Monetary award cap.* Arbitration claims will be subject to the arbitration program award cap of \$25,000,000, including any rate prescription, per rate dispute and \$2,000,000 per practice dispute unless:

(1) The defending party's opt-in notice provides for a lower monetary cap or;

(2) The parties agree to select a lower award cap that will govern their arbitration proceeding. The parties may change the award cap by incorporating an appropriate provision in their agreement to arbitrate.

(3) Counterclaims will not offset against the monetary award cap of the initiating claim. A counterclaim is an independent claim and is subject to a monetary award cap of \$25,000,000, including any rate prescription, per rate dispute and \$2,000,000 per practice dispute, separate from the initiating claim, or to a lower cap agreed upon by the parties in accordance with § 1108.4(b)(2).

(c) *Assignment of arbitration-program-eligible matters.* The Board shall assign to arbitration all arbitration-program-eligible disputes where all parties to the proceeding are participants in the Board's arbitration program, or where one or more parties to the matter are participants in the Board's arbitration program, and all other parties to the proceeding request or consent to arbitration for a particular dispute.

(d) *Matters partially arbitration-program-eligible.* Where the issues in a proceeding before the Board relate in part