

STB EX PARTE NO. 560

ARBITRATION OF CERTAIN DISPUTES SUBJECT TO
THE STATUTORY JURISDICTION OF THE
SURFACE TRANSPORTATION BOARD

Decided August 25, 1997

The Surface Transportation Board adopts rules providing a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the Board.

BY THE BOARD:

The Railroad-Shipper Transportation Advisory Council (RSTAC)¹ has recommended that we adopt rules providing for informal dispute resolution through arbitration. We have agreed and, in the notice of proposed rulemaking in this proceeding,² we proposed rules along the lines of those recommended to us by the RSTAC. We have received comments on the proposed rules from various shipper,³ carrier,⁴ and other⁵ interests. With the exception of UTU-IL,

¹ RSTAC was established to advise the Chairman of the Surface Transportation Board (Board), the Secretary of Transportation, and Congressional oversight committees with respect to rail transportation policy issues of particular importance to small shippers and small railroads. 49 U.S.C. 726(f).

² Served March 26, 1997, and published at 62 Fed. Reg. 14,385 (1997).

³ The Chemical Manufacturers Association (CMA); the North Dakota Grain Dealers Association (NDGD); the National Grain and Feed Association (NGFA); The National Industrial Transportation League (NITL); Shintech Incorporated; the Society of the Plastics Industry (SPI); and the Western Coal Traffic League and the National Mining Association (jointly, WCTL).

⁴ The Association of American Railroads (AAR) and the American Short Line Railroad Association (ASLRA).

⁵ The Association for Transportation Law, Logistics and Policy (ATLLP); Distribution Data Inc. (DDI); the United States Department of Transportation (DOT); and the United Transportation Union-Illinois Legislative Board (UTU-IL).

the commenters all support adoption of an arbitration mechanism. The commenters offer a variety of suggestions to enhance, modify, or clarify the proposed rules. We have decided to incorporate many, but not all, of their suggestions. (Indeed, the commenters do not agree among themselves on certain aspects of the proposed procedures.) We discuss their various suggestions, and our conclusions, section by section below. The revised rules that we are adopting are set forth in the appendix.

Overview.

These rules will provide a means for parties to resolve through voluntary binding arbitration certain rail-related disputes that are subject to the statutory jurisdiction of the Board. This arbitration will not be available for obtaining a license (such as authority to construct, acquire, operate over, or abandon a line, or to merge or pool resources with another carrier) or an exemption from regulation, or for prescribing for the future any conduct, rules, or results of general, industry-wide applicability. Rather, this arbitration is designed for the resolution of specific disputes between specific parties involving the payment of money or involving rates or practices related to rail transportation or service that is subject to the statutory jurisdiction of the Board.

We believe that this arbitration alternative will save costs and reduce litigation burdens on parties to disputes that might otherwise have to be brought to the Board for formal resolution. It will enable the parties to resolve those disputes themselves informally, with only limited Board involvement. Some Board involvement is necessary and unavoidable, however, because we cannot abdicate responsibilities that are placed upon us by our governing statute. We must therefore monitor arbitration conducted under our auspices to protect against outcomes that would contravene fundamental principles of our governing statute. At the same time, we do not expect to examine the details of individual arbitral decisions or otherwise interject ourselves into the arbitration process unnecessarily. We do not wish to defeat the purpose of voluntary arbitration as an inexpensive, streamlined alternative to our traditional, formal dispute resolution proceedings. With these objectives in mind, we consider the specific provisions of the rules and the comments received.

§ 1108.1 Definitions.

Proposed section 1108.1 defined certain terms and identified abbreviations used in part 1108. Two commenters (ATLLP and NITL) suggest clarifying the references to our governing statute. Upon further reflection, we conclude that it is not necessary to use a different term for the statute as it was prior to the amendments made by the *ICC Termination Act of 1995 (ICCTA)* and as it is afterwards. Rather, to be consistent with our other regulations (also in title 49, chapter X of the *Code of Federal Regulations*), we are clarifying that “Interstate Commerce Act” means the Interstate Commerce Act as amended from time to time, including the amendments made by the *ICCTA*.⁶

§ 1108.2 Statement of Purpose, Organization, and Jurisdiction.

Proposed section 1108.2 stated the objective of these arbitration procedures; imposed limitations on the types of actions that can be handled under these procedures; identified types of disputes suited for arbitration; explained that these procedures are not adopted pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. 571, *et seq.* (ADRA); and specified that these procedures extend to transportation exempted from regulation pursuant to 49 U.S.C. 10502 (formerly 49 U.S.C. 10505), whether exempted by the Board or by our predecessor, the Interstate Commerce Commission (ICC). A number of commenters seek clarification of these rules.

These rules provide for arbitration of disputes that would otherwise come to the Board; they are not intended to displace existing private dispute resolution mechanisms that may be available. Nor do they provide a substitute for the longstanding labor arbitration procedures that are provided for in our standard

⁶ We are making two other minor, clarifying changes to the definitions in section 1108.1. One change provides a more specific statutory reference for the RSTAC. The other change is to the definition of “statutory jurisdiction;” in referring to exempted transportation, we are deleting the word “active” before “regulation” (at the suggestion of the ATLLP) to avoid any possible confusion as to categories of regulation.

labor protective conditions.⁷ In addition, they do not displace the existing arbitration provisions for car hire disputes.⁸

The arbitration provided for by these rules is entirely separate from the alternative dispute resolution (ADR) mechanisms that are available under 49 U.S.C. part 1109, which include both arbitration and mediation. The part 1109 mechanisms are available for use in any proceeding already before the Board (which is then held in abeyance pending the outcome of the ADR efforts), and they are conducted pursuant to the ADRA. In contrast, the part 1108 arbitration mechanism, which is limited to certain types of disputes,⁹ will be available only for disputes that have not yet been brought to the Board in a formal proceeding. Thus, a complaint filed under part 1108 will initiate an arbitration process, rather than a formal Board proceeding, and will incur a different filing fee than the fee that would have been charged had the complainant(s) sought formal Board resolution of the dispute. Moreover, as specified in section 1108.2(c), the part 1108 arbitration will not be conducted pursuant to the ADRA.

AAR argues that disputes regarding exempted transportation should be excluded from arbitration. We do not believe that such an exclusion is necessary or appropriate. As AAR acknowledges, we retain full jurisdiction over exempted transportation.¹⁰ Moreover, Congress has directed us to grant exemptions liberally and then "review carrier actions after the fact to correct abuses of market power"¹¹ in "post hoc proceedings."¹² Thus, the revocation power is a central feature of section 10502.¹³ A dispute involving exempted transportation, and a request for appropriate regulatory relief, can be brought to

⁷ As suggested by AAR, we are revising section 1108.2(b) to expressly provide that these rules will not be available for arbitration that is conducted pursuant to labor protective conditions.

⁸ See, 49 C.F.R. 1033.1(c)(2)(ii); *Joint Pet. for Rulemaking on Railroad Car Hire Compensation*, 9 I.C.C.2d 80 (1992), 9 I.C.C.2d 582 (1993), 9 I.C.C.2d 1090 (1993) (*Car Hire*), *pet. for review dismissed*, *Southern Pac. Transp. Co. v. ICC et al.*, 69 F.3d 583 (D.C. Cir. 1995), *reh'g denied* (1996); *Joint Pet. for Rulemaking on Railroad Car Hire Compensation*, Ex Parte No. 334 (Sub-No. 8) (STB served April 22, 1997).

⁹ At the suggestion of the ATLLP, we are revising the first sentence of section 1108.2(b) to more clearly describe those proceedings for which these arbitration procedures will not be available.

¹⁰ *Consolidated Rail Corp.—Declaratory Order—Exemption*, 1 I.C.C.2d 895 (1986) (*Conrail*), *aff'd sub nom. G. & T. Packaging Co. v. Consolidated Rail Corp.*, 830 F.2d 1230 (3d Cir. 1987), *cert. denied*, 485 U.S. 988 (1988).

¹¹ H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 105 (1980).

¹² *Illinois Commerce Comm'n v. ICC et al.*, 819 F.2d 311, 315 (D.C. Cir. 1987).

¹³ *Conrail*, 1 I.C.C.2d at 899.

us at any time, in the form of a petition for full or partial revocation of the underlying exemption.¹⁴ If we conclude that relief should be granted, then we will revoke the exemption, to the extent appropriate, at the same time that we grant the affirmative relief sought. We see no reason why the arbitration alternative should not likewise be available to consenting parties for addressing such disputes.

CMA seeks clarification that these arbitration procedures would be available for post-merger disputes regarding merger implementation conditions. So long as the dispute involves a monetary or service issue limited to a small number of arbitrating parties and does not require broader attention or relief, we see no reason to preclude its resolution through this arbitration mechanism.

§ 1108.3 Matters Subject to Arbitration.

Proposed section 1108.3 provided that arbitration is available under these rules only where all necessary parties voluntarily submit to arbitration¹⁵ and only for matters that are within the Board's jurisdiction. It further provided that the arbitrator is not bound by our rules and regulations for the resolution of such disputes.

WCTL suggests that we allow unified arbitration of disputes involving jurisdictional and non-jurisdictional elements that are intertwined, but that we limit any Board review to the portion of the dispute that is within our jurisdiction. The example that WCTL offers, however--"a private contract that incorporates elements of common carriage (such as rates or service levels)"--is one that is entirely outside of our jurisdiction.¹⁶ We will deal with any issue as to the availability of our arbitration procedures for truly mixed

¹⁴ See, e.g., *Rail General Exemption Auth'y--Misc. Agric. Commodities--Pet. of G. & T. Terminal Packaging Co. et al. to Revoke Conrail Exemption*, 8 I.C.C.2d 674 (1992), remanded in part on other grounds sub nom. *Mr. Sprout, Inc. et al. v. United States et al.*, 8 F.3d 118 (2d Cir. 1993), cert. denied, 512 U.S. 1205 (1994); *Rail General Exemption Auth'y--Misc. Agric. Commodities--Pet. of G. & T. Terminal Packaging Co. et al. to Revoke Conrail Exemption*, Ex Parte No. 346 (Sub-No. 14A) (STB served December 16, 1996) (decision on remand).

¹⁵ We are removing as unnecessary the adjective "adequate" in section 1108.3(a) in referring to notice as provided under these rules.

¹⁶ *H.B. Fuller Co. v. Southern Pac. Transp. Co.*, No. 41510 (STB served August 22, 1997) (incorporating tariff terms into a transportation contract under former 49 U.S.C. 10713 [now 49 U.S.C. 10709] did not render transportation under the contract subject to regulation; the referenced tariff terms became contract terms for purposes of transportation performed under the contract).

jurisdictional/non-jurisdictional disputes (and the severability of such a dispute for review purposes)¹⁷ if necessary, on a case-by-case basis.

ATLLP and WCTL ask that we clarify whether ICC and Board policies, principles, and precedents should be applied by the arbitrator. While we do not wish to straitjacket the arbitrator, we agree that the arbitrator should take general guidance from the regulatory context within which the dispute has arisen, particularly given that limited Board review of arbitral decisions rendered under these rules is available. Therefore, we are modifying the last sentence of section 1108.3(b) to incorporate the language suggested by the ATLLP.

§ 1108.4. Relief.

Proposed section 1108.4 provided for both monetary damages and specific performance for up to 3 years to be awarded through arbitration. It also provided for petitions to have the arbitrator modify or vacate the original award based on materially changed factual circumstances.

AAR asks that we clarify that monetary damages are limited to those that are available under the Interstate Commerce Act, thus precluding punitive or consequential damages. Such a restriction is consistent with the jurisdictional limitation of this arbitration alternative, and we are modifying section 1108.4(a)(1) accordingly. ATLLP suggests that we also prescribe the interest rate that should be applied to any monetary award, to make it consistent with the interest that would be available in our regulatory proceedings, as prescribed in 49 CFR 1141.1. We are concerned, however, that directing the details of arbitral awards in this manner is unnecessary and inappropriate given the objective of arbitration as an alternative to our regulatory decisions. Although arbitrators should generally follow our broad principles, we will avoid interjecting ourselves into the details of arbitral decisions or unnecessarily constricting the discretion of the arbitrator.

With respect to the specific performance remedy, we are modifying section 1108.4(a)(2) (as suggested by WCTL) to clarify that the relief available embraces rate prescriptions. We reject AAR's suggestion that we remove the 3-year cap on specific performance remedies. These arbitration procedures are designed for a quick, simple resolution of an immediate dispute; arbitration does

¹⁷ As discussed below, we do not envision hearing many appeals of arbitral decisions under these rules.

not provide the best mechanism for weighing and imposing long-term responsibilities and constraints of a regulatory nature. We consider 3 years a reasonable time horizon for arbitration.¹⁸

AAR and ATLLP argue that petitions to modify or vacate an arbitral award should be available when there has been a material change in the applicable law as well as the applicable facts. We agree that, particularly where specific performance awards continue in effect, the arbitrator should have the opportunity to decide whether the original award should be altered.¹⁹ Therefore, we are modifying section 1108.4(b) to apply to any material change in circumstances. Also, we are adding the standard arbitration vacation grounds contained in 9 U.S.C. 10 (as suggested by AAR). The arbitrator should have an opportunity for self-correction if a party can show that the original arbitral decision exceeded the authority of the arbitrator, for example, or was based on fraudulent submissions.

§ 1108.5 Fees and Costs.

Proposed section 1108.5 required payment of a non-refundable filing fee with the submission of any complaint, answer, or appeal of an arbitration decision; directed that each party bear its own expenses; and provided for the fees of the arbitrator to be paid by the losing party or, if no party loses entirely, shared equally by the parties.

Upon further reflection, we do not believe that it would be appropriate to impose a filing fee for submitting an answer to a complaint seeking arbitration of a dispute if the answer simply declines to participate in the arbitration process. Unless the answer agrees to submission of at least some part of the complaint to arbitration, there can be no anticipation of a benefit to be conferred upon the party filing the answer, as required for imposition of a fee under the

¹⁸ As WCTL points out, during the period in which the arbitral remedy is in force, we would not expect parties to bring the same matter to us in a formal regulatory proceeding, as they have agreed to be bound by the arbitrator's determination.

¹⁹ We see little need for, or benefit from, an express requirement that reasonable deference be accorded to the prior decision, as WCTL suggests. Such language should be unnecessary, as an arbitrator is not likely to modify or vacate an award lightly, without giving careful consideration to the original award. Moreover, including such a directive could needlessly or inappropriately limit the arbitrator's discretion.

Independent Offices Appropriation Act of 1952.²⁰ We are modifying sections 1108.5(a) and 1002.2(f)(87)(i) and (ii) accordingly. In addition, we are modifying sections 1108.5 and 1002.2(f)(87)(v) to specify the filing fee for petitions to modify or vacate an arbitration award, a fee that was expressly contemplated by proposed section 1108.5(b), but not expressly set forth in proposed section 1002.2(f)(87). We believe the fee should be set at the same level (\$150) as the fee for appeals of arbitral decisions, as each seeks to undo the original arbitral decision.

We are also modifying section 1108.5(b) (as suggested by AAR) to provide that the parties may agree to share the costs of an arbitration in any manner they choose. The cost allocations prescribed in the rules will be for use only where the parties do not agree to another arrangement.

Finally, at the suggestion of WCTL, we are adding a provision in section 1108.6(a) that each arbitrator's fees be disclosed at the outset, so that parties may better estimate and control the costs of arbitration. Such a disclosure provision is less intrusive than, and thus preferable to, NDGD's suggestion that we dictate the level of fees that can be charged by arbitrators.²¹

§ 1108.6 Arbitrators.

Proposed section 1108.6 provided for a roster of arbitrators to be established and updated annually by RSTAC, in consultation with the Board's Chairman. It further provided for the Chairman to select randomly from the RSTAC roster the arbitrator to be used in each arbitration. It contained provisions for the parties to find the designated arbitrator unacceptable or to select an arbitrator from the roster themselves by mutual agreement. Finally, it included provisions for the replacement of an arbitrator who becomes incapacitated or is unable to fulfill his/her duties.

²⁰ Cf. *Federal Power Comm'n v. New England Power Co.*, 415 U.S. 345 (1974); *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services*, 1 I.C.C.2d 60, 68-69 (1984), remanded in part on other grounds sub nom. *Central & S. Motor Freight Tariff Ass'n et al. v. United States et al.*, 777 F.2d 722 (D.C. Cir. 1985).

²¹ Specifically, NDGD suggests that we place a cap on the fee that can be charged by a retiree acting as an arbitrator and that a moonlighting arbitrator not be allowed to charge a fee if his/her salary is not disrupted. We note that any issue of compensation for outside employment is a matter properly left between the salaried arbitrator and his or her employer.

We received comments on every aspect of the arbitrator selection process. The comments have persuaded us to revamp that process significantly. We start with the roster of eligible arbitrators. We are persuaded that active government officials should not be eligible for placement on the roster of arbitrators.²² With that limitation, we are broadening the description of those eligible for inclusion on the roster (as suggested by AAR, NITL and ATLLP) to include any persons experienced in rail transportation or economic issues similar to those capable of arising before the Board. We are also expanding the initial list of eligible arbitrators from 12 to 21 names (as suggested by NGFA) to provide a broader selection of arbitrators and to more comfortably accommodate the use of a multiple-arbitrator panel, rather than a single arbitrator, if the parties so choose (a suggestion made by both NGFA and NDGD).

We are also persuaded (by the comments of CMA, NGFA and WCTL) that the roster should be maintained by the Board's Chairman, because the Board (through the Chairman) must take ultimate responsibility for the arbitrators used in arbitrations conducted under Board auspices. The Chairman must determine that each arbitrator is qualified to conduct arbitration for the Board. We agree with AAR and NDGD that the parties to a dispute should be free to select an arbitrator who is not already on the roster; they may do so by having that person added to the roster upon demonstrating his/her qualifications under section 1108.6(a). Names may also be added to the roster (upon satisfying the eligibility criteria) in response to applications from the public and nominations by RSTAC or other interested organizations, such as the National Grain Car Council²³ (as suggested by NGFA). In short, we see no reason to limit the roster to a chosen few; rather, we believe the roster should be open to any willing arbitrator who demonstrates the necessary experience.

As RSTAC has volunteered to establish a roster, we are providing that RSTAC will start the process by developing the initial roster in consultation with the Board's Chairman, who must be assured of each arbitrator's qualifications. Thereafter, the roster will be maintained by the Chairman, who may augment the roster at any time to include other eligible arbitrators and may remove from the roster any arbitrators who are no longer available. We will publish the initial

²² The exclusion of active government officials should obviate the concerns expressed by AAR, NITL, and NDGD regarding compensation, public disclosure, and the potential for influencing future governmental decisions.

²³ The National Grain Car Council was established by the ICC, and continued by the Board pursuant to the *ICCTA*, to provide advice on matters pertaining to rail grain car supply.

roster, as suggested by NGFA. We will make the updated roster available to the public, upon request, at all times. To assist parties in selecting an arbitrator from the roster, the roster will include a short summary of the background and employment history of each arbitrator (as suggested by AAR and CMA), as well as the fee (or fee range) charged by that arbitrator (as suggested by WCTL).

We are persuaded by the comments of AAR, NDGD, and WCTL that the selection of the arbitrator should be made by the parties, rather than the Board's Chairman. We favor an open selection process for individual arbitrations, so that there can be no suspicion of any favoritism as between arbitrators. Thus, where the parties cannot agree on an arbitrator, we prefer the type of selection process used by the American Arbitration Association, whereby each party would strike those arbitrators who are not acceptable to it and rank the remaining arbitrators on the roster in order of preference, and the Board's Chairman would then designate as the arbitrator the person receiving the highest combined ranking by the parties.²⁴ We are modifying the rules accordingly.

Finally, at the suggestion of WCTL, we are expanding the grounds for replacement of an arbitrator to include the unwillingness of the arbitrator to serve and the agreement of both parties that the arbitrator should be replaced. Given the consensual nature of this arbitration, it is appropriate to allow for the replacement of an arbitrator if both parties have lost confidence in that arbitrator.

§ 1108.7 Arbitration Commencement Procedures.

Proposed section 1108.7 set forth the requirements and procedures for filing and serving a complaint seeking arbitration; for filing and serving an answer to such a complaint; for seeking cross-relief or relief against a third-party; and for addressing any deficiencies in a complaint. It also provided that an agreement to arbitrate under these rules will be deemed a contract to arbitrate and will be subject to 9 U.S.C. 9 (allowing a court to enforce an arbitration award) and 9 U.S.C. 10 (allowing a court to vacate an arbitral award on certain limited grounds).

²⁴ Because this selection process is simple and primarily in the hands of the parties voluntarily submitting to arbitration, we see no need to specify time limits for this process, as suggested by ATLLP. The parties will set the pace for the selection process. The designation of an arbitrator by the Board's Chairman is a ministerial process that will take little time.

At the suggestion of ATLLP, we are deleting the provision allowing service of a complaint on the defendant's representative, and requiring instead that all complaints be served on a responsible official of the defendant at his/her usual place of business.²⁵ To accommodate our record-keeping needs, we are also requiring that, along with the original, two copies of each complaint and answer be filed with the Board.

ATLLP suggests that we include a 15-day time limit in which the Board would notify the parties of any fatal deficiency in a complaint. Such a time limit is not appropriate. We do not intend to substantively review complaints upon filing; we simply reserve the right to raise at the outset a facially apparent deficiency that we might notice. However, our failure to spot a jurisdictional impediment at the outset would not preclude us from later examining our jurisdiction, as we reserve the right to review arbitral decisions on the grounds that they exceed our statutory jurisdiction.²⁶ With respect to a deficiency that is noticed at the outset, we agree with NDGD that a complaining party that does not remedy the deficiency should not be entitled to a partial refund of the filing fee.²⁷ Accordingly, we are removing the refund provision from section 1108.7(g).

UTU-IL asks that the rules provide for intervention in individual arbitrations. We do not consider intervention to be necessary or appropriate. The disputes that can be brought for arbitration are ones that involve only the individual parties to the dispute. They involve matters that the parties could settle privately, without necessitating any Board involvement, if they could reach an amicable agreement. A central objective of the arbitration alternative is to avoid a formal regulatory proceeding. It would contravene the voluntary and informal nature of this arbitration program for us to impose upon an arbitration the participation of uninvited third parties. The joinder provisions of section 1108.7(f) are sufficient for obtaining the participation of third parties that are necessary to a proper resolution of the dispute.

²⁵ We are not adopting ATLLP's suggestion that we require a certification that the complaint has been served in the prescribed manner. We are not persuaded that a certification requirement is necessary given the informal, voluntary nature of this arbitration process.

²⁶ Indeed, a court can vacate an arbitral award on the basis that it exceeds the arbitrator's authority. 9 U.S.C. 10(d).

²⁷ See, 49 CFR 1002.2(c).

§ 1108.8 Arbitration Procedures.

Proposed section 1108.8 set forth procedures to govern the conduct of arbitrations, addressing such matters as timetables, discovery, collection of evidence, and confidentiality concerns.

AAR asks whether the time frames set out in the rules (90 days to complete the evidentiary process and 30 days for the arbitrator's decision²⁸) take precedence over any shorter time frames contained in the statute. The example given by AAR--setting the terms of financial assistance under 49 U.S.C. 10904(f), which the statute requires to be completed within 30 days--might be difficult to accomplish within the statutory period, as it will take some time to arrange for arbitration and select an arbitrator. Therefore, we are issuing a blanket exemption from statutory deadlines for matters handled under arbitration (as suggested by AAR), pursuant to our authority under 49 U.S.C. 10502. We have confidence in the arbitrators to keep matters moving and in the parties not to abuse the time flexibility built into the arbitration process. We are also adding a provision that the parties may agree to vary these time limits (also suggested by AAR), but only with the approval of the arbitrator.²⁹

The various comments that we received regarding the reach of discovery (from ATLLP and WCTL) and attendant confidentiality concerns (from AAR, CMA, and SPI) have prompted us to reconsider the role of discovery in this arbitration process. We conclude that, given the consensual nature of these arbitrations (and the availability of regulatory relief if arbitration is not successful), discovery in the arbitration should be limited to what is agreed upon by the parties. While the arbitrator may supervise the discovery process, the arbitrator may not force a party to release information against its will. A party that is not sufficiently forthcoming or cooperative on discovery matters, however, acts at its peril. Without providing sufficient information, the party may not be successful in making its case before the arbitrator. The arbitrator may draw adverse inferences from the party's unwillingness to provide needed

²⁸ The intent of these time frames is clear, and we see no need to provide further specificity as to start dates (as suggested by ATLLP) in view of the flexibility that we are according to the parties and the arbitrator to vary these times.

²⁹ For agreements shortening the times, the arbitrator's approval should ensure that the time allotted is adequate to enable a fully informed, well reasoned decision by the arbitrator. For agreements lengthening the time, the arbitrator's supervision should ensure against misuse of the arbitration process.

information. Alternatively, the arbitrator might conclude that, without the party's cooperation in discovery, or without certain critical information, the dispute cannot be resolved. These potential consequences should spur parties interested in resolving their disputes through arbitration into providing the discovery that is needed.

Our decision not to allow an arbitrator to force involuntary release of information obviates the interlocutory appeals issue raised by ATLLP and the concerns expressed by AAR, CMA and SPI regarding protection of confidential information. As to the latter, because the parties will mutually determine the information that will be released in the arbitration, they can and should also determine between themselves the confidential nature of information and the measures to be observed to protect confidentiality.

As WCTL points out, the order that was specified in proposed section 1108.8(c) for the presentation of evidence--complainant first, defendant next, followed by simultaneous replies--is not workable. The defendant would have nothing further to respond to in its reply, unless it were to defer part of its response to the complainant's case to the final round (thus unfairly precluding an opportunity for the complainant to reply to that portion). Accordingly, we are changing the general order to omit a reply by the defendant. We are also including a provision (suggested by AAR) allowing the parties to agree to variations in the order of evidentiary submissions.³⁰

Proposed section 1108.8(e) provided that, where proof submitted to an arbitrator addresses railroad costs, such proof should be prepared in accordance with the standards that we employ in ascertaining the costs at issue. AAR asks that we clarify what is meant by our standards. These standards refer both to our Uniform Rail Costing System (URCS) and to applicable precedent in which we have accepted either modifications to URCS-determined costs or other means of determining costs. We agree with WCTL that discovery should be sufficient to enable parties to meet our standards, and we are adding an express admonition to that effect.

³⁰ CMA cautions against requiring a multiplicity of written filings, asserting that the arbitrator should have the flexibility to waive written submissions in favor of face-to-face oral sessions. We agree, and believe that this flexibility is already provided in sections 1108.8(b) and (c).

§ 1108.9 Decisions.

Proposed section 1108.9 provided for written decisions by the arbitrator that are binding and judicially enforceable. It required that the arbitrator's decision be served on the Board as well as on the parties. Upon further reflection, we agree with AAR that we do not need to be served with each decision, as we will not review an arbitral decision unless we receive an appeal under the limited grounds of section 1108.10 (in which case the appeal must include a copy of the decision).³¹ We will simply require the arbitrator simultaneously to notify us, in writing, that a decision has been rendered.

§ 1108.10 Precedent.

Proposed section 1108.10 provided that arbitration decisions shall have no precedential value. ATLLP suggests that, while the arbitrator's decision should not have precedential value, a Board decision acting on an appeal of an arbitrator's decision should have. We agree that, as with any other Board decision, a Board decision reviewing an arbitrator's decision should carry the weight to which it demonstrates itself to be entitled. We are revising the language of section 1108.10 accordingly.

§ 1108.11 Enforcement and Appeals.

Proposed section 1108.11 provided for limited appeals to the Board,³² and an automatic stay of an appealed arbitral decision pending Board action. It provided that the Board will review arbitral decisions only in cases involving issues of general transportation importance, and may vacate or amend an arbitration award only on grounds that the award (1) exceeds our statutory jurisdiction or (2) does not take its essence from our governing statute. Finally, it limited court actions with respect to arbitral awards (whether or not appealed to the Board) to the provisions of 9 U.S.C. 9 (procedures for judicial

³¹ We do not agree with WCTL and NGFA that the arbitrators' decisions should be made public. Arbitration decisions will have no precedential value, and parties may be more likely to use arbitration if the process is confidential.

³² To accommodate our review, we are adding that an original and 10 copies of appeals and replies to appeals are required. *See*, 49 CFR 1104.3.

enforcement of an arbitral award) and 9 U.S.C. 10 (grounds for judicially vacating an arbitral award).

Upon further reflection, we are removing the reference to general transportation importance as a criterion for Board review of arbitral decisions because it has engendered needless confusion.³³ The general transportation language did not add to the two substantive grounds listed for overturning an arbitrator's award. It was intended merely to reflect the fact that we will exercise our review powers sparingly, and we are revising section 1108.11(c) to make this more clear. We will not review the reasonableness of an arbitrator's decision.³⁴ We will look at an arbitral decision only to determine whether it must be vacated or amended on the two narrow grounds listed.

Several commenters criticize the second ground for vacating or amending an arbitral award--that the award "does not take its essence from" our governing statute--as nebulous (DOT), ephemeral (NITL), or confusing (NGFA). However, the "essence" standard is the well-established construction for review of arbitral awards. *See, United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) (*Steelworkers*) (emphasis added) (involving arbitration decisions issued under collective bargaining agreements):

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining

³³ As WCTL and SPI point out, disputes handled under arbitration arguably could never meet a general transportation importance standard, because arbitration will not be available for matters of general industry-wide applicability (section 1108.2(b)) and arbitral decisions will not have precedential value (section 1108.10)). The inclusion of this criterion prompted NDGD to ask whether all jurisdictional issues are inherently matters of general transportation importance.

³⁴ We reject the UTU-IL notion that we should review arbitral decisions *de novo*. A complete review would defeat the purpose of offering arbitration as an alternative to our proceedings, by turning it into a full-scale Board proceeding and Board decision. Similarly, we see no reason to broaden our scope of review in the manner suggested by WCTL, to mirror the standard of review applied by courts to Board decisions. So long as an arbitral decision does not require vacation or amendment under either of the two grounds listed, we see no need to interject ourselves into the arbitration in this manner.

agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

As *Steelworkers* and the companion cases³⁵ of the "*Steelworkers Trilogy*" make clear, this "essence" standard is both a necessary and a very narrow standard of review. Thus, contrary to the concern expressed by some of the commenters (NITL, NGFA, NDGD), it will not lead to widespread substantive review of arbitral awards.

Several parties (AAR, NITL, and WCTL) question the limitation on court actions in section 1108.11(d). They assert that judicial review of all Board decisions—including decisions by the Board affirming, vacating, or declining to review arbitral decisions—is available in the United States courts of appeals under the Hobbs Act³⁶ (except for actions to enforce or enjoin Board decisions solely for the payment of money, which are in United States district courts).³⁷ We agree that a Board decision vacating an arbitral award is reviewable by a United States court of appeals under the Hobbs Act. However, where the Board declines to disturb an arbitral award, we remain convinced that all issues as to the propriety of the award provided can and should be addressed by a United States district court in an appropriate action under 9 U.S.C. 9 to enforce the award.³⁸ In that situation, it is the (undisturbed) award itself that is being challenged, and multiple or splintered review in more than one court would be inappropriate.³⁹

³⁵ *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960) and *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

³⁶ 28 U.S.C. 2321, 2342.

³⁷ 28 U.S.C. 1336.

³⁸ The grounds for vacation of an award by a district court contained in 9 U.S.C. 10 embrace the two narrow grounds to be applied by the Board, both of which come under 9 U.S.C. 10(d) (arbitrators exceeded their powers). Where a party seeks to resist an arbitral award on one of the other grounds provided for in 9 U.S.C. 10, it must address its argument directly to the court, as we will not review arbitral awards on such grounds.

³⁹ We are not persuaded that a limitation on court actions during the pendency of the time period for Board appeals (suggested by ATLLP) is necessary in the context of arbitral decisions. Indeed, as noted above, certain issues as to the propriety of arbitral awards are properly addressed to the court in the first instance, not to the Board.

§ 1108.12 Additional Matters.

Proposed section 1108.12 provided that group complainants⁴⁰ or group defendants shall act as a group in the selection of an arbitrator. WCTL suggests that we include a provision for dismissal if all parties are unable to agree on the selection of an arbitrator. We do not believe this is necessary because we do not expect such a situation, given our revamped arbitrator selection process and the expressed willingness of the parties to submit to arbitration. If a total impasse should occur, however, the arbitration would simply never begin. Alternatively, arbitration could proceed as to some parties or some issues, if the parties so choose.

Small Entities.

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The program established under these rules is entirely voluntary and is available for limited types of disputes.

Environment.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Chairman Morgan, *commenting*:

The final arbitration rules adopted in this proceeding represent another effort by the Board to facilitate the resolution of disputes within its jurisdiction. I again applaud the initiative of the Railroad-Shipper Transportation Advisory Council in putting forth the proposal that formed the basis for these final rules, and I am indeed encouraged by the near-unanimous general support for, and the significant interest shown in the many suggestions received on, that original proposal.

Since its creation on January 1, 1996, the Board has attempted to be a model of common-sense government -- an entity that provides an efficient, expeditious,

⁴⁰ For precision and consistency within part 1108, we are replacing the term "plaintiffs" in proposed section 1108.12 with "complainants" (as suggested by WCTL).

expeditious, even-handed, and effective forum for the resolution of disputes. In striving to be such a forum, the Board has sought ways to promote private-sector negotiation and resolution of controversies where appropriate. The final rules that we are adopting represent yet another means to those ends.

There continues to be concern expressed within the surface transportation community about the litigation burdens and costs necessarily associated with pursuing formal complaints at the Board, particularly for smaller entities. There also is legitimate concern that formal litigation can stifle appropriate privately negotiated solutions. I believe that the arbitration program adopted in this proceeding is a significant step in responding to those concerns.

The final rules include many changes to the original proposal that are intended to promote this arbitration process as a less burdensome, more informal alternative for certain types of dispute resolution among private parties, with minimal Board involvement. For example, the selection of arbitrators is left as much as possible to the parties; discovery is to be voluntary, with no specific rules of procedure or Board involvement in that process; and the opportunity for appeal of arbitral decisions to the Board is quite limited.

Thus, if there is a true commitment to reducing litigation costs and promoting private-sector resolution, the arbitration program adopted in this proceeding provides the kind of informal, private-party process that common-sense government should be promoting, and that all interested parties seem to want.

It is ordered:

(1) Title 49, chapter X, of the *Code of Federal Regulations* is amended by adding new part 1108, as set forth in Appendix A hereto.

(2) Section 1002.2(f) of title 49, chapter X, of the *Code of Federal Regulations* is amended by adding new paragraph (87), as set forth in Appendix B hereto.

(3) Notice of the rules adopted herein will be published in the *Federal Register* on September 16, 1997, and will be transmitted to Congress pursuant to Pub. L. No. 104-121 (March 29, 1996).

(4) This decision will be effective October 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen. Chairman Morgan commented with a separate expression.

APPENDIX A

PART 1108 -- ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE
STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

Sec.

- 1108.1 Definitions.
- 1108.2 Statement of Purpose, Organization, and Jurisdiction.
- 1108.3 Matters Subject to Arbitration.
- 1108.4 Relief.
- 1108.5 Fees and Costs.
- 1108.6 Arbitrators.
- 1108.7 Arbitration Commencement Procedures.
- 1108.8 Arbitration Procedures.
- 1108.9 Decisions.
- 1108.10 Precedent.
- 1108.11 Enforcement and Appeals.
- 1108.12 Additional Matters.

Authority: 49 U.S.C. 721(a).

§ 1108.1 Definitions.

- (a) "Arbitrator" means an arbitrator appointed pursuant to these provisions.
- (b) "ICC" means the Interstate Commerce Commission.
- (c) "Interstate Commerce Act" means the Interstate Commerce Act as amended from time to time, including the amendments made by the ICC Termination Act of 1995.
- (d) "RSTAC" means the Rail-Shipper Transportation Advisory Council established pursuant to 49 U.S.C. 726.
- (e) "STB" means the Surface Transportation Board.
- (f) "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.

§ 1108.2 Statement of Purpose, Organization, and Jurisdiction.

(a) These provisions are intended to provide a means for the binding, voluntary arbitration of certain disputes subject to the statutory jurisdiction of the STB, either between two or more railroads subject to the jurisdiction of the STB or between any such railroad and any other person.

(b) These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (*e.g.*, construction, abandonment, purchase, trackage rights, merger, pooling) or exemption, or to prescribe for the future any conduct, rules, or results of general, industry-wide applicability. Nor are they available for arbitration that is conducted pursuant to labor protective conditions. These procedures are intended for the resolution of specific disputes between specific parties involving the payment of money or involving rates or practices related to rail transportation or service subject to the statutory jurisdiction of the STB.

(c) The alternative means of dispute resolution provided for herein are established pursuant to the authority of the STB to take such actions as are necessary and appropriate to fulfill its jurisdictional mandate and not pursuant to the Administrative Dispute Resolution Act, 5 U.S.C. 571, *et seq.*

(d) On January 1, 1996, the STB replaced the ICC. For purposes of these procedures, it is immaterial whether an exemption from regulation was granted by the ICC or the STB.

§ 1108.3 Matters Subject to Arbitration.

(a) Any controversy between two or more parties, subject to resolution by the STB, and subject to the limitations in § 1108.2 hereof, may be processed pursuant to the provisions of this part 1108, if all necessary parties voluntarily subject themselves to arbitration under these provisions after notice as provided herein.

(b) Arbitration under these provisions is limited to matters over which the STB has statutory jurisdiction and may include disputes arising in connection with jurisdictional transportation, including service being conducted pursuant to an exemption. An Arbitrator should decline to accept, or to render a decision regarding, any dispute that exceeds the STB's statutory jurisdiction. Such Arbitrator may resolve any dispute properly before him/her in the manner and to the extent provided herein, but only to the extent of and within the limits of the STB's statutory jurisdiction. In so resolving any such dispute, the Arbitrator will not be bound by any procedural rules or regulations adopted by the STB for the resolution of similar disputes, except as specifically provided in this part 1108; provided, however, that the Arbitrator will be guided by the Interstate Commerce Act and by STB and ICC precedent.

§ 1108.4. Relief.

(a) Subject to specification in the complaint, as provided in § 1108.7 herein, an Arbitrator may grant the following types of relief:

(1) Monetary damages, to the extent available under the Interstate Commerce Act, with interest at a reasonable rate to be specified by the Arbitrator.

(2) Specific performance of statutory obligations (including the prescription of reasonable rates), but for a period not to exceed 3 years from the effective date of the Arbitrator's award.

(b) A party may petition an Arbitrator to modify or vacate an arbitral award in effect that directs future specific performance, based on materially changed circumstances or the criteria for vacation of an award contained in 9 U.S.C. 10.

(1) A petition to modify or vacate an award in effect should be filed with the STB. The petition will be assigned to the Arbitrator that rendered the award unless that Arbitrator is unavailable, in which event the matter will be assigned to another Arbitrator.

(2) Any such award shall continue in effect pending disposition of the request to modify or vacate. Any such request shall be handled as expeditiously as practicable with due regard to providing an opportunity for the presentation of the parties' views.

§ 1108.5 Fees and Costs.

(a) Fees will be utilized to defray the costs of the STB in administering this alternate dispute resolution program in accordance with 31 U.S.C. 9701. The fees for filing a complaint, answer, third party complaint, third party answer, appeals of arbitration decisions, and petitions to modify

or vacate an arbitration award will be as set forth in 49 CFR 1002.2(f)(87). All fees are non-refundable except as specifically provided and are due with the paying party's first filing in any proceeding.

(b) The parties may agree among themselves who will bear the expenses of arbitration, including compensation of the arbitrator. Absent an agreement, each party will bear its own expenses, including, without limitation, fees of experts or counsel. Absent an agreement, the fees of the Arbitrator will be paid by the party or parties losing an arbitration entirely. If no party loses an arbitration entirely (as determined by the Arbitrator), the parties shall share equally (or pro rata if more than two parties) the fees and expenses, if any, of the Arbitrator, absent an agreement otherwise.

§ 1108.6 Arbitrators.

(a) Arbitration shall be conducted by an arbitrator (or panel of arbitrators) selected, as provided herein, from a roster of persons (other than active government officials) experienced in rail transportation or economic issues similar to those capable of arising before the STB. The initial roster of arbitrators shall be established by the RSTAC in consultation with the Chairman of the STB, and shall contain not fewer than 21 names. The roster shall thereafter be maintained by the Chairman of the STB, who may augment the roster at any time to include other eligible arbitrators and may remove from the roster any arbitrators who are no longer available. The initial roster shall be published; thereafter the roster shall be available to the public, upon request, at all times. For each arbitrator on the roster, the roster shall disclose the level of the fee (or fee range) charged by that arbitrator.

(b) The parties to a dispute may select an arbitrator (or panel of arbitrators) and submit the name(s) (and, if not already on the roster of arbitrators, the qualifications) of the agreed-upon person(s) in writing to the Chairman of the STB. Any person(s) so designated who is not already on the roster, if found to be qualified, will be added to the roster and may be used as the arbitrator(s) for that dispute.

(c) If the parties cannot agree upon an arbitrator (or panel of arbitrators), then each party shall, using the roster of arbitrators, strike through the names of any arbitrators to whom they object, number the remaining arbitrators on the list in order of preference, and submit its marked roster to the Chairman of the STB. The Chairman will then designate the arbitrator (or panel of arbitrators, if mutually preferred by the parties) in order of the highest combined ranking of all of the parties to the arbitration.

(d) The process of selecting an Arbitrator pursuant to this section shall be conducted confidentially following the completion of the Arbitration Commencement Procedures set forth in § 1108.7 hereof.

(e) If, at any time during the arbitration process, a selected Arbitrator becomes incapacitated, unwilling or unable to fulfill his/her duties, or if both parties agree that the arbitrator should be replaced, a replacement Arbitrator will be promptly selected under the process set forth in paragraphs (b) and (c) of this section..

§ 1108.7 Arbitration Commencement Procedures.

(a) Each demand for arbitration shall be commenced with a written complaint. Because arbitration under these procedures is both voluntary and binding, the complaint must set forth in detail: the nature of the dispute; the statutory basis of STB jurisdiction; a clear, separate statement

of each issue as to which arbitration is sought; and the specific relief sought. Each complaint shall contain a sworn, notarized verification, by a responsible official of the complaining party, that the factual allegations contained in the complaint are true and accurate. Each complaint must contain a statement that the complainant is willing to arbitrate pursuant to these arbitration rules and be bound by the result thereof in accordance with those rules, and must contain a demand that the defendants likewise agree to arbitrate and be so bound.

(b) The complaining party shall serve, by overnight mail or hand delivery, a signed and dated original of the complaint on each defendant (on a responsible official at his or her usual place of business), and an original and two copies on the STB, accompanied by the filing fee prescribed under § 1108.5(a) and set forth in 49 CFR 1002.2(f)(87). Each complaint served on a defendant shall be accompanied by a copy of this part 1108.

(c) Any defendant willing to enter into arbitration under these rules must, within 30 days of the date of a complaint, answer the complaint in writing. The answer must contain a statement that the defendant is willing to arbitrate each arbitration issue set forth in the complaint or specify which such issues the defendant is willing to arbitrate. If the answer contains an agreement to arbitrate some but not all of the arbitration issues in the complaint, the complainant will have 10 days from the date of the answer to advise the defendant and the STB in writing whether the complainant is willing to arbitrate on that basis. Upon the agreement of the parties to arbitrate, these rules will be deemed incorporated by reference into the arbitration agreement.

(d) The answer of a party willing to arbitrate shall also contain that party's specific admissions or denials of each factual allegation contained in the complaint, affirmative defenses, and any counterclaims or set-offs which the defendant wishes to assert against the complainant. The right of a defendant to advance any counterclaims or set-offs, and the capacity of an Arbitrator to entertain and render an award with respect thereto, is subject to the same jurisdictional limits as govern the complaint.

(e) A defendant's answer must be served on the complainant, other parties, and the STB in the same manner as the complaint.

(f) A defendant willing to enter into arbitration under these procedures only if it is able to obtain cross-relief against another defendant or a non-party may serve an answer containing an agreement to arbitrate that is conditioned upon the willingness of any such third party to enter into arbitration as a third party defendant. Simultaneously with the service of any such conditional answer, the defendant making such answer shall serve a complaint and demand for arbitration on the party whose presence that defendant deems to be essential, such complaint and demand to be drawn and served in the same manner as provided in paragraphs (a) and (b) of this section. A defendant receiving such a complaint and demand for arbitration and that is willing to so arbitrate shall respond in the same manner as provided in paragraphs (c), (d), and (e) of this section.

(g) Upon receipt of a complaint and demand for arbitration served by a complainant on a defendant, or by a defendant on a third-party defendant, the STB promptly will notify the parties serving and receiving such documents of any patent deficiencies, jurisdictional or otherwise, which the STB deems fatal to the processing of the complaint, and will suspend the timetable for processing the arbitration until further notice. If the complainant is unwilling or unable to remedy such deficiencies to the satisfaction of the STB within such time as the STB may specify, the complaint shall be deemed to be withdrawn without prejudice. Upon satisfaction that two or more parties have unconditionally agreed to arbitrate under these procedures, the STB will so notify the parties and commence procedures for the selection of an Arbitrator.

(h) An agreement to arbitrate pursuant to these rules will be deemed a contract to arbitrate, subject to limited review by the STB pursuant to § 1108.11(c), for the purpose of subjecting the

arbitration award to the provisions of 9 U.S.C. 9 (court enforcement of an arbitration award), and 9 U.S.C. 10 (vacation of an arbitration award by a court on certain limited grounds).

§ 1108.8 Arbitration Procedures.

(a) The Arbitrator will establish rules, including timetables, for each arbitration proceeding.

(1) The evidentiary process will be completed within 90 days from the start date established by the arbitrator, and the arbitrator's decision will be issued within 30 days from the close of the record. The parties may agree to vary these timetables, however, subject to the approval of the arbitrator. Matters handled through arbitration under these rules are exempted from any applicable statutory time limits, pursuant to 49 U.S.C. 10502.

(2) Discovery will be available only upon the agreement of the parties.

(b) Evidence will be submitted under oath. Evidence may be submitted in writing or orally, at the direction of the Arbitrator. Hearings for the purpose of cross-examining witnesses will be permitted at the sound discretion of the Arbitrator. The Arbitrator, at his/her discretion, may require additional evidence.

(c) Subject to alteration by the Arbitrator or by agreement of the parties in individual proceedings, as a general rule, where evidence is submitted in written form, the complaining party will proceed first, and the defendant will proceed next. The complainant will then be given an opportunity to submit a reply. At the discretion of the Arbitrator, argument may be submitted with each evidentiary filing or in the form of a brief after the submission of all evidence. Page limits will be set by each Arbitrator for all written submissions of other than an evidentiary nature.

(d) Any written document, such as a common carrier rate schedule, upon which a party relies should be submitted as part of that party's proof, in whole or in relevant part. The Arbitrator will not be bound by formal rules of evidence, but will avoid basing a decision entirely or largely on unreliable proof.

(e) Where proof submitted to an Arbitrator addresses railroad costs, such proof should be prepared in accordance with the standards employed by the STB in ascertaining the costs at issue. Discovery should be sufficient to enable parties to meet these standards.

(f) Where the Arbitrator is advised that any party to an arbitration proceeding wishes to keep matters relating to the arbitration confidential, the Arbitrator shall take such measures as are reasonably necessary to ensure that such matters are treated confidentially by the parties or their representatives and are not disclosed by the Arbitrator to non-authorized persons. If the Arbitrator regards any confidential submission as being essential to his/her written decision, such information may be considered in the decision, but the Arbitrator will make every effort to omit confidential information from his/her written decision.

§ 1108.9 Decisions.

(a) Decisions of the Arbitrator shall be in writing and shall contain findings of fact and conclusions. All such decisions shall be served by the Arbitrator by hand delivery or overnight mail on the parties. At the same time, the arbitrator shall notify the STB, in writing, that a decision has been rendered.

(b) By agreeing to arbitrate pursuant to these procedures, each party agrees that the decision and award of the Arbitrator shall be binding and judicially enforceable in law and equity in any court of appropriate jurisdiction, subject to a limited right of appeal to the STB as provided below.

§ 1108.10 Precedent.

Decisions rendered by arbitrators pursuant to these procedures shall have no precedential value.

§ 1108.11 Enforcement and Appeals.

(a) An arbitration decision rendered pursuant to these procedures may be appealed to the STB within 20 days of service of such decision. Any such appeal shall be served by hand delivery or overnight mail on the parties and on the STB, together with a copy of the arbitration decision. Replies to such appeals may be filed within 20 days of the filing of the appeal with the Board. An appeal or a reply under this paragraph shall not exceed 20 pages in length. The parties shall furnish to the STB an original and 10 copies of appeals and replies filed pursuant to this section. The filing fee for an appeal will be as set forth in 49 CFR 1002.2(f)(87).

(b) The filing of an appeal, as allowed in paragraph (a) of this § 1108.11, automatically will stay an arbitration decision pending disposition of the appeal. The STB will decide any such appeal within 50 days after the appeal is filed. Such decision by the STB shall be served in accordance with normal STB service procedures.

(c) The STB will review, and may vacate or amend, an arbitration award, in whole or in part, only on the grounds that such award

- (1) exceeds the STB's statutory jurisdiction; or
- (2) does not take its essence from the Interstate Commerce Act.

(d) Effective arbitration decisions rendered pursuant to these procedures, whether or not appealed to the STB, may only be enforced in accordance with 9 U.S.C. 9 and vacated by a court in accordance with 9 U.S.C. 10, except that an STB decision vacating an arbitration award is reviewable under the Hobbs Act, 28 U.S.C. 2321, 2342.

§ 1108.12 Additional Matters.

Where an arbitration demand is filed by one or more complainants against one or more defendants, the complainants as a group and the defendants as a group shall be entitled to exercise those rights, with respect to the selection of arbitrators, as are conferred on individual arbitration parties.

APPENDIX B

PART 1002--FEES

§ 1002.2 *Filing fees.*

(f) ***

(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:

(i) Complaint	\$75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration ..	\$75
(iii) Third Party Complaint	\$75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	\$75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	\$150
