

GUIDELINES FOR ARBITRATION HEARING

The proceeding is governed by the Arbitration Rules themselves. These Rules should be strictly followed so that all members know of the procedures to be followed. Any questions about procedure should be referred to the Executive Vice President. Normally, all procedural preliminaries will have occurred before you are asked to decide the case.

You are normally asked to interpret a contract or other agreement, or to resolve a difference that occurred because the parties reached no agreement. Consequently, your first obligation is to enforce whatever agreement the parties had, regardless of whether you feel it was fair or equitable, or in conformity with the Trade Rules. Reliance on the Trade Rules is only necessary when there was no specific agreement on the issue between the parties, and reliance on trade practice becomes necessary only if there is no trade rule. In short, your job is to interpret the Contract, the Trade Rules and Trade Custom; not to invent new ones.

All members of the Committee, including the chairman, should fully participate in discussions and decision-making. All members should vote on the result. The chairman need not be reluctant to take a position.

Your decision and written opinion should be based upon the evidence presented by the parties and your knowledge of the trade. Just as the evidence submitted is important, you may also infer facts from the failure to produce particular evidence. You should not conduct an independent investigation by talking to the parties prior to the hearing or to anyone else concerning the merits of the case. Do not interview others outside of the Committee about their views of the case. Review the case from your own perspective and in light of the evidence, and reach a conclusion based upon that.

The Committee may not award punitive or extra damages. The arbitration system is designed to enforce contracts according to their terms, not to extract extra punishment beyond enforcing the agreement of the parties. At the same time, it is appropriate to award actual damages, Also, interested from the time the contract was breached until the date of your decision is appropriate.

Your written opinion should state the important facts of the case in a manner complete enough so that it is apparent to even a non-involved reader why the Committee reached its conclusion. The decision should be complete and final, and not request that any party take any action (such as submitting additional data) in order to implement it.

No set of guidelines can be complete since new situations always arise. Therefore, you should not be hesitant to call the Executive Vice President about any questions or problems which arise. In appropriate, the Executive Vice President can put you in touch with the Association's legal counsel.

You must disqualify yourself if you or your firm is a party to an arbitration proceeding, or if you or your firm has a financial or commercial interest in the outcome of the proceeding, or if you are

prejudiced for or against either party, or if a party requests that you be disqualified and that request is upheld by the Committee.

While the Committee is in complete control of its own procedure, it is required by the Rules to conduct a proceeding that is fundamentally fair to all parties. That means that each member must be scrupulously fair to each party and must take all steps necessary to insure that no party is the victim of prejudice or unfair surprise.

PROCEDURE FOR ARBITRATION HEARING

First, the chairman will ask committeemen to introduce themselves. He will then ask the Petitioner to introduce himself and any witnesses he may have with him. He will then ask the Respondent to introduce himself and any witnesses he may have with him.

Next, the chairman will ask both parties if they have any objections to any of the committeemen serving on the committee. If so, the party voicing the objection should state reason why the committeeman or committeemen should be disqualified. The committee shall be the sole judge of the sufficiency of such reasons as stated by the objection party.

Our rules allow for a three man committee to render a decision, however, if either party so desires, said party is entitled to a five man committee for the hearing.

In regard to the disqualification of a committeeman, as requested by either party, or the request for a five man committee by either party, the chairman shall adjourn the hearing for a short while to allow time to obtain a replacement in the Fort Worth area. The hearing shall then be continued as scheduled.

When no objections are voiced by either party, the chairman will advise the parties that our arbitration hearings are informal and that committeemen shall have the right to interrupt during testimony to ask questions.

The chairman will also advise the parties that he will can on the Petitioner to make any statements he would like to make and to answer questions from committee members. The same procedure will follow for the Respondent.

After the chairman has given both parties an opportunity to make further statements, and after the committeemen have asked questions, the chairman will ask both parties to wait in the Association office until the committee can determine that no more questions are to be asked before a decision is rendered. The chairman will then advise both parties that they are excused.

The committee will then write its decision, make disposition of deposits of both parties, and take the decision to the Association office to be typed and signed by each committeeman in favor of the decision. Copies of the decision will then be sent to both parties by certified mail, as required by our rules.

All committee members are urged to read Article IX of our constitution prior to the hearing.