

§ 1108.5

(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

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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