



TRANSPORTATION ARBITRATION BOARD, INC.

SHIPPER—CARRIER PREPARATION FOR ARBITRATION

TIME LIMITS

Claimants should be aware that submitting a claim to arbitration does not toll contractual time limits for instituting suit, such as the two-years-and-one-day time limit provision in the Uniform Bill of Lading. The parties to a claim can agree to binding arbitration at any time, but the requirements of the contract of carriage (and applicable laws and regulations) as to legal action must be fulfilled to protect the Claimant's right to collect any arbitration award. The Transportation Arbitration Board, Inc. (TAB) can and has handled arbitration after suits have been filed by Claimants as one means of arriving at an "out-of-court" settlement. TAB stands ready to handle arbitration at the suggestion or recommendation of the court system (which means, of course, after the initiation of a legal action.)

INTRODUCTION

Preparation for the arbitration of a freight claim starts with both parties signing the agreement to arbitrate. (See Appendix B of TAB By-Laws for the Agreement Form.) The agreement and a check from each party for its arbitration fee are submitted to the administrator of TAB. The Administrator will acknowledge receipt of the agreement and checks by indicating to both parties the assigned case number.

Within thirty (30) days after the execution of the agreement, the Claimant shall transmit its claim file, any other documentation, and brief to the Carrier. All evidence in support of the Claimant's case should be included as nothing new may be added later in the procedure.

Within thirty (30) days of receipt of the Claimant's file, the Carrier shall respond by transmitting all of its evidence and reply brief together with the Claimant's claim file, other documentation, and brief to the Claimant. Again, all evidence in the support of the

Carrier's case should be included as nothing new may be added later in the procedure. The Carrier should retain a copy of the Claimant's brief for its file and may retain reproduction of other documents as well.

The Claimant must then send the complete file plus two reproductions containing all evidence and briefs to the Administrator of TAB within fifteen (15) days of receipt of the Carrier's file; the Claimant may add a supplemental brief only to rebut facts and/or contentions contained in the Carrier's brief and evidence. No new evidence may be added and no new contentions may be raised in the Claimant's rebuttal brief unless necessary to rebut the Carrier's evidence and contentions in its reply brief. A copy of the rebuttal brief and any documents must be sent to the Carrier at this time.

When arbitrating, a clear-cut, unbiased decision of the disputed claim is desired. Therefore, you "cast the die" when you start the claim file.

Arbitration is based upon equity under the law. Present the facts and contentions simply and briefly, but adequately. Avoid legal wording – do not think of arbitrators as being lawyers, but do think of them as being knowledgeable about claims.

Often "fact" and "contention" become confused.

A "fact" is something that is or that is actually performed. Example: "the item is damaged" (a fact); "It was dropped" (a contention) – unless the party making this statement actually saw the occurrence (which could make it a fact).

State the facts in logical sequence and in date order. Number each document sequentially. The shipper's copy of the original bill of lading should be number one.

Reference to documents in the file should always include its location in the file. Example: "...the bill of lading (Document #1)..." If a document that is not a part of the file is referred to, explain it fully, with an explanation for its absence from the file.

References to legal decisions, previous arbitrations, reference sources, etc. should be clearly footnoted. Care should be exercised not to quote "out of context." If at all possible, include a copy of reference material (even previous TAB arbitrations) – the arbitrators may not have ready access to the source text.

The brief must be typewritten, single-spaced, and on 8 ½" x 11" paper. Each brief should be prepared in five copies:

- Original: Becomes part of the arbitration file
- First Duplicate: Mark for the other participant
- Second Duplicate: Retain in your file
- Third and Fourth Duplicates: Each becomes part of the second and third copies of the arbitration file to be sent to TAB

See below for the discussion of the Carrier's reply brief and the Claimant's rebuttal brief.

IDENTIFICATION

The brief should start with the Claimant's name, file number, claimed amount, and then the Carrier's name and file number.

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It is highly recommended that each party list the documents in numerical order, with identification, and a brief description of the contribution to the file. (Example 1: Bill of Lading No. "x" – indicates driver signed clear for "x" number of pieces.) This listing should be placed prior to the statement of facts, contentions, and pleadings, which complete the brief.

FACTS

These should include the details of the shipment and the claim. As a rule, the "facts" are a recap of the documentary evidence supplied.

Such facts might include:

- a. A complete description of the shipment, point of origin, shipper, consignee, and destination. If the Claimant is neither shipper nor consignee,

an explanation of the Claimant's interest.

- b. The route of movement and the freight bill number and date. All Carriers should be identified by name.
- c. Identification of the exceptions noted at time of delivery. An explanation should be included if exceptions were not noted. A record of any inspection.
- d. The amount of claim, date presented, and type of claim such as loss, damage (visible or concealed), delay, etc. If the claim is complicated with allowances, salvage, repair costs, etc., a description of how the amount was determined.
- e. A resume of the handling given the claim by Carrier and Claimant including the date and reason for disallowance or lack of prior resolution of the claim.

CONTENTIONS

These should include determination of what happened, why liability does or does not exist, defects in the handling of the claim, etc. It is helpful to specifically refer to documents by name and by number when discussing their relevance to the argument.

Such contentions may refer to laws, tariffs, regulations, court decisions, prior TAB decisions, etc. If so, reproductions of the cited material should be added for the convenience of the arbitrators who may not have ready access to such material. If reproduction is impractical, the full citation including the actual source used should be included.

PLEADINGS

The conclusion of the brief may include the pleading for an award of the claimed amount, arbitration fee, etc. All pleadings for more than the claimed amount should include the reason(s) why such are justified.

HOW TO PREPARE THE FILE FOR ARBITRATION

DOCUMENTS

Documents must be 8 ½" x 11" – larger original documents must be folded to

conform; smaller documents and photographs should be cemented, taped, or stapled onto 8 ½" x 11" paper to conform with this size to prevent loss. Original documents should be used in preference to reproductions, but data appearing on any reproduction must be clear, legible, and complete. (It is advisable to retain copies of documents submitted in the event of the loss of originals in transmission.)

Explain why any original document is not being supplied. (Reproductions do not always reveal material fact or points of contention.)

FOR THE CLAIMANT

The Claimant should arrange the file in chronological order from the bottom up. The first document on the bottom should be the bill of lading, followed by the freight bill, invoice, claim presentations, and other evidence such as tallies, order picking records, seal records, weight tickets, etc. These should be followed by all pertinent exchanges of correspondence in chronological order with the newest always on top.

Care should be taken to eliminate duplication. Nothing is to be gained by presenting an unnecessarily bulky file.

Each item should be boldly numbered in the top right-hand corner beginning with the bill of lading, but avoid obliterating key data. A stiff backing sheet should be attached to the file to prevent possible tearing off and subsequent loss of the bill of lading. It is advisable to fasten documents together. Stapling in the upper left-hand corner is recommended. Please do not bind by using spiral or three ring notebooks. Do not number the brief and index, if any.

The Claimant should transmit the file to the Carrier along with its original brief with an extra copy for the Carrier to retain. First Class mail has proved a reliable medium since TAB was started in 1975.

FOR THE CARRIER

Upon receipt of the file from the Claimant, the Carrier should add to the file its additional documents, beginning with the delivery receipt, followed by other documents—such as manifest, load charts, checking records, inspection reports, on-hand notices, etc., plus any additional correspondence deemed pertinent. Again,

care should be take to avoid duplication of any of the Claimant's file, unless marginal notes are pertinent and unless the Carrier's copy is the more legible. The numbering started by the Claimant should be continued in sequence. A stiff backing sheet should be used for fastening all documents together.

The Carrier may now prepare a reply brief, if desired. (Should the Carrier elect not to prepare a brief, it is assumed that the facts and contentions of the Claimant will contain all the data needed by the arbitrators and that this data is not contested.) The Carrier should summarize "FACTS", "CONTENTIONS", AND "PLEADINGS". These should be responded to item by item with all appropriate defenses as this will be the Carrier's only opportunity to do so. Any contention that the value of the claim should be changed should be supported with appropriate documents and/or references.

Again, do not number the brief or index, if any. An index of documents could be beneficial particularly if the documents are numerous.

The Carrier should return the file to the Claimant with the Claimant's original brief, including documentation, with three complete copies. The Claimant may retain a copy and the other two will be sent to TAB with the original arbitration file.

FOR THE CLAIMANT

Upon receipt of the file from the Carrier, the Claimant may rebut (or comment on) (rebuttal brief) the reply brief prepared by the Carrier, but may not add new documents, facts, or contentions, unless necessary for specific rebuttal of facts and contentions added by the Carrier in its reply brief.

The Claimant should review the file to insure that all documents are intact, numbered, and in numeric order. The briefs should be placed on top.

The file should now contain, in reverse order:

Claimant's Documents: (Numbered consecutively from bottom up starting with the Bill of Lading)

Bill of Lading, claim form*, paid freight bill, delivery receipt invoice, inspection reports, repair bills, salvage receipts, all other

documents necessary to establish a prima facie case and any other pertinent material.

Carrier's Documents:
If any

Claimant's Brief: (Not numbered)
An index of documents is the first page(s) of any brief.

Carrier's Reply (Not numbered)
Brief: If any

Claimant's Rebuttal (Not numbered)
Brief: If any

*This document should be placed in its chronological order within the "claim file".

The arbitration file and two additional complete reproductions should now be transmitted to the Administrator of TAB for arbitration. First Class mail has served very well in transmitting arbitration files for years. A copy of the transmittal letter should be sent to the Carrier with a copy of the rebuttal brief and documents, if any. This latter action will assure the Carrier that it has a complete copy of the arbitration file.

Upon receipt of the files, the Administrator examines the file to verify compliance with TAB procedures, and then selects a team of arbitrators to consider the case. One carrier arbitrator and one shipper arbitrator is selected. The photocopies of the file and briefs are sent to the arbitrators. The Administrator retains the original file. The two arbitrators examine the file and confer with each other to determine and agree upon a unanimous decision. The decision is written by one of them and the files are returned to the Administrator. The Administrator retains the working file copies and a copy of the decision and returns the original file to the claimant and sends a copy of the decision to each party. Compliance with the decision is required within sixty (60) days.

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The decision will be rendered and published as provided by the By-Laws of TAB.

EFFECTS OF THE ARBITRATORS DECISION

The decision of TAB arbitration is binding upon the parties on all issues contained in the decision, including the award of damages and costs. It shall be final after thirty (30) days from its date of mailing and the award is to be satisfied by the end of sixty (60) days, if there is no appeal. The thirty (30) day period is the time allotted for the filing of an appeal (see Appendix D of TAB By-Laws) if either party should choose to do so.