

# Administrative Rules for Arbitration

Transportation ADR Council, Inc.

## 1. INITIATING ARBITRATION

Any party may initiate the process of arbitration by mailing or faxing the referral form to the Administrator. Upon receipt of the form, the Administrator will contact the other parties, solicit their participation in the arbitration process, provide the appropriate information and make the final arrangements for the arbitration.

If the parties to the dispute are signatories to a pre-dispute arbitration process, the Administrator will provide the appropriate information and make the final arrangements for the arbitration. Any objection or challenge to the arbitrability of the dispute shall be reserved to the arbitrator for determination.

## 2. SELECTION OF ARBITRATION FORMAT

In the referral form, the parties will designate one of three formats for the arbitration as follows:

### A. Written Submission

All sides provide written submissions with supporting documentation to an arbitrator who will review the papers and render a summary award;

### B. Conference Call

The written submission procedure followed by a conference call where the arbitrator may hear any further argument and testimony and ask questions of the parties' counsel and witnesses; or

### C. Evidentiary Hearing

An arbitration hearing where the parties present live witnesses and other evidence at a designated location before an arbitrator.

If a written submission format is requested, the Administrator will confer with the parties to determine appropriate deadlines for the submission of the claimant's brief, the respondent's response and the claimant's reply.

If a conference call format is requested, the Administrator will confer with the parties in the same fashion as set forth in the preceding paragraph. The arbitrator will be responsible for scheduling the conference call.

If an evidentiary arbitration hearing is requested, the Administrator will contact the parties for the purpose of determining the answers to an array of other issues relevant to the procedure. Once the Administrator obtains agreement on these issues, it will incorporate these terms into a proposed written agreement and issue the agreement to arbitrate to all parties for their respective approval.

If a counterclaim is filed, the Administrator shall make appropriate changes to the scheduling of submissions.

To the extent procedural issues cannot be the subject of agreement, the Administrator reserves the right to make a final determination of such issues, including delegating to the arbitrator the right to decide such issues.

## 3. SELECTION OF ARBITRATOR

The Administrator will make available upon request background information about potential arbitrators and will confer with all parties regarding the selection of the arbitrator. The Administrator will make an effort to obtain agreement among the parties regarding the selection of the arbitrator.

Parties who are not able to agree on the selection of an arbitrator within a reasonable period of time following the initiation of the procedure but, in any event, not more than 45 days, will be bound by the selection to be made by the Administrator in its sole discretion.

4. CONFLICTS OF INTEREST AND CONFIDENTIALITY

The parties and the arbitrator have a duty to make prompt disclosure to the Administrator of any fact or circumstance which would reasonably call into question the neutrality or impartiality of the arbitrator. Such facts or circumstances include without limitation any part, present or prospective direct or indirect representational, business, organizational, family or other affiliation between the arbitrator and the parties.

If the arbitrator is a member of a law firm, a diligent effort must be undertaken to determine through conflict checks and disclose whether a conflict may or does exist with any of the attorneys of the firm or its clients.

If any such disclosure is made, the Administrator will inquire if the parties wish to waive any possible conflict and proceed. If one or more parties object to the selection for cause, the arbitrator will be excused and the selection process will be reinstated. The Administrator reserves the right to determine if the de-selection is for cause. If all parties waive any objection, the arbitrator will proceed to hear the case.

The arbitrator shall maintain the confidentiality and privacy of the arbitration proceeding subject to applicable law.

5. FINAL ARRANGEMENTS

The Administrator will confer with the parties regarding the following:

- A. stipulations regarding discovery;
- B. stipulations regarding an exchange of documents intended to be submitted to the arbitrator in advance of the submission or hearing;
- C. stipulations regarding how the presentation of evidence at the evidentiary hearing will occur; and
- D. other matters material to the arbitration.

To the extent stipulations are not entered into by the parties concerning these pre-hearing procedures, the parties may request a ruling from the arbitrator which will be binding on the parties.

Based upon its contacts with the parties, the Administrator will forward to the parties a proposed written agreement to arbitrate. The parties should execute the agreement and provide a copy of the executed agreement to the opposing party. Once the parties execute the agreement to arbitrate, the Administrator will notify the arbitrator.

The scheduling of a convenient time and location of the arbitration and the issuance of notice will be the responsibility of the arbitrator based on the agreement by the parties, subject to the intervention of the Administrator, only if necessary. The arbitrator is authorized to postpone the deadline for the written submissions, the conference call or the evidentiary hearing upon a showing of good cause in his or her sole discretion or upon his or her own motion. If all of the parties agree, any deadline imposed in this arbitration process may be modified.

If the parties do not agree upon the selection of a format, the Administrator will designate the least complicated of the formats considered by the parties.

The arbitrator may issue rulings prior to the arbitration hearing for the purpose of preserving the property or the status quo which is the subject of the arbitration.

Subject to the Administrator's decisions, the law of Missouri will determine all procedural issues involving the arbitration process, unless the parties otherwise agree.

6. THE ARBITRATION HEARING

The Administrator will confer with the parties regarding a reasonable schedule for submissions to the arbitrator. Failing agreement, the Administrator reserves the right to impose deadlines for the filing of submissions to the arbitrator.

In the written submission arbitration, the arbitrator shall review the argument and evidence provided and render a summary decision in a timely fashion but in no event later than thirty (30) days following the receipt of all the submissions.

In the conference call arbitration, the arbitrator shall have a reasonable opportunity to review the submissions prior to the conference call and shall render a summary decision in a timely fashion but in no event later than thirty (30) days following the conference call.

In the evidentiary hearing, the arbitrator may receive live testimony and written submissions, including affidavits and reports, and shall render a summary decision in a timely fashion but in no event later than thirty (30) days following the closing of the hearing.

Objections concerning evidentiary matters are reserved to the arbitrator.

No stenographic record of the evidentiary or conference call arbitration proceeding shall be made except where the party desiring a written record gives written notice to all parties no less than ten (10) days before the hearing and will be responsible for the payment of all costs associated with the stenographic recording.

The arbitrator shall comply with the applicable law regarding the administration of oaths to witnesses in the evidentiary hearings. The arbitrator may receive testimony without the administration of an oath to the witness. Cross-examination of any live witness shall be allowed to the same extent as would be permitted in a court of law.

The arbitrator may issue subpoenas for witnesses at the arbitration hearing as permitted by law.

The arbitrator may re-open the hearing on his or her own motion or upon the motion of a party at any time prior to the issuance of the award. The arbitrator's award shall be issued in writing to the parties by the arbitrator. The award shall be final and may be appealed only to the extent permitted by the law of Missouri, unless the parties otherwise agree.

If, following the issuance of notice, a party fails to appear at the arbitration and fails to seek a postponement, the arbitrator may hear the case and grant a default judgment. The party which is present will be required to present a case sufficient to allow the arbitrator a basis from which to make an award. The arbitrator may hear a motion by the non-appearing party to set aside the default judgment and may issue relief with such conditions as are fair and equitable.

7. COSTS

The administrative costs for arbitration are as follows:

- A. written submission only - \$200
- B. written submission plus conference call - \$250
- C. evidentiary hearing - \$300

A supplemental charge of \$50 for each additional unrepresented party or additional separately-represented party in excess of two parties will apply. Long distance telephone, fax charges and incidental costs incurred by the Administrator shall be billed to the parties as additional costs. The cost of the call in the conference call format will be submitted as an incidental cost.

The arbitrator's fee and costs are as follows:

- D. minimum for one-half day (4 hours) or for written submission - \$500
- E. full day (8 hours) - \$1,000
- F. a prorated rate for time in excess of half or full days, or for time expended in conference calls
- G. travel, meal and lodging costs, if any, incurred by the arbitrator

Each party's portion of the administrative costs are non-refundable and must be pre-paid. A minimum advance of \$500 for the arbitrator's fee must be pre-paid. If the arbitration does not occur, the \$500 deposit will be refunded. Depending upon the anticipated length of the arbitration, the Administrator reserves the right to require a deposit for the arbitrator's fee in excess of \$500.

At the discretion of the Administrator, the parties may be required to agree in advance to an arbitration procedure with respect to the payment of arbitration fees and administrative costs.

Following the arbitration, the arbitrator will advise the Administrator of his or her time and charges. The Administrator will promptly issue a statement and, upon receipt of payment, the Administrator will promptly pay the arbitrator.

#### 8. QUALIFICATIONS OF ARBITRATORS

Any person desiring to make his or her services as an arbitrator available under this program shall comply with the following:

- A. Be a member in good standing of the Transportation Lawyers Association;
- B. Accurately complete and submit the arbitrator's application form to the Administrator; and
- C. Agree to abide by the administrative rules as set forth herein and as may be amended from time to time.

#### 9. WAIVER OF OBJECTIONS

If a party fails to make a timely objection in writing with the Administrator or the arbitrator with respect to any alleged failure to comply with these rules, such failure may be treated by the Administrator or arbitrator as a waiver of any such non-compliance.

#### 10. ENFORCEMENT

The arbitrator is authorized to apply these administrative rules to those duties in respect to his or her duties as arbitrator. The awards rendered by the arbitrator may be enforced by a court of competent jurisdiction in accordance with law.

#### 11. NOTICES

All notices, communications or awards required by these rules to be made in writing may be made by first class mail, expedited commercial mailing services, telegram or fax. The Administrator may give notice by telephone.

#### 12. PRE-DISPUTE ARBITRATION PROVISIONS

Parties using pre-dispute arbitration provisions in their contracts agree that any dispute subject to these rules shall be governed by the rules as they exist at the time of the referral form initiating the procedure is received by the Administrator.

#### 13. APPROVAL AND AMENDMENTS

The ADR Council, Inc. shall approve these administrative rules, set their effective date, and make such amendments as it believes necessary and appropriate for the prompt, reliable and inexpensive disposition of disputes arising from the transportation industry.