

Employee Benefit Plan Claims Arbitration RULES

As Amended and Effective on January 1, 1988

Sponsored by the International Foundation of Employee Benefit Plans

Administered by the American Arbitration Association

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Introduction

American Arbitration Association

To facilitate the arbitration process, in accordance with applicable laws, the American Arbitration Association (AAA) is available to administer arbitration cases under various specialized rules.

It welcomes this latest opportunity to make its services available to employee benefit plans by issuing these rules in cooperation with the International Foundation of Employee Benefit Plans.

The AAA maintains throughout the United States panels of arbitrators that include experts in all industries and professions. By arranging for arbitration under these rules, parties may obtain the services of arbitrators who are familiar with employee benefit plans.

The Association does not act as arbitrator. Its function is to administer arbitrations in accordance with the agreements of parties and to maintain panels from which arbitrators may be chosen by them. Once designated, the arbitrator decides the issues and the award is final and binding.

Inquiries about these rules may be addressed to the International Foundation of Employee Benefit Plans, 18700 West Bluemound Road, PO Box 69, Brookfield, WI 53008-0069 (the telephone number is (262) 786-6700) or to any office of the AAA.

The International Foundation of Employee Benefit Plans

The International Foundation of Employee Benefit Plans is the largest educational association serving the employee benefits and compensation industry. For almost 50 years, The International Foundation has served as the premier source of education and information to the industry. The International Foundation is a nonprofit, nonlobbying organization. Total membership includes 35,000 individuals representing 8,400 multiemployer trust funds, corporations, public employee groups and professional advisory firms throughout the United States and Canada.

Jointly administered multiemployer labor-management employee-benefit trust funds grew from the Taft-Hartley Act of 1947 and exist to provide employees and their families and dependents with pensions upon retirement. They are administered by boards of trustees on which labor and management are equally represented. The boards receive contributions and distribute funds to employees in the form of benefits, in accordance with provisions of collective-bargaining and trust agreements and law. As such, the operation of employee-benefit trust funds is an area of legal complexity.

Rules

The Employee Retirement Income Security Act of 1974 (ERISA) requires that all private pension and welfare plans establish a procedure to "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review of the decision denying the claim."

Many employee welfare and pension plans currently provide for arbitration of benefit-claim disputes in their collective bargaining agreements. For those plans that do not, the International Foundation of Employee Benefit Plans has developed these rules in cooperation with the American Arbitration Association.

Plan administrators may employ the rules so that arbitration is required for all claims or they may provide that arbitration is optional for the plan, the claimant, or both. If it is decided that arbitration will be the required procedure to resolve all benefit-claim disputes, the following clause may be made a part of the plan.

Any controversy or claim made on or after [the effective date] arising from or relating to a claim for benefits payable by this plan shall* be settled by arbitration administered by the American Arbitration Association under its Employee Benefit Plan Claims Arbitration Rules, incorporated by reference herein. The decision of the arbitrator shall be final and binding and judgment on the award may be entered in any court having jurisdiction.

*Options

- a. To make arbitration optional to the claimant, insert after "shall" "at the option of the claimant".
- b. To make arbitration optional to the plan, insert after "shall" "at the option of the Trustees".
- c. To make arbitration optional to the plan and the claimant, insert after "shall" "upon the joint submission of the Board of Trustees and the claimant".

Employee Benefit Plan Claims Arbitration Rules

1. The Agreement of the Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever, in a Submission or document of a pension or welfare plan (as defined in the Employee Retirement Income Security Act of 1974), they have provided for arbitration by the American Arbitration Association (hereinafter the AAA) or under its rules. These rules shall apply in the form obtaining when the arbitration is initiated.

2. The Name of the Tribunal

Any tribunal constituted by the parties under these rules shall be called the Employee Benefit Plan Claims Arbitration Tribunal.

3. The Administrator

When arbitration is provided for under these rules and an arbitration instituted thereunder, the

AAA is authorized to administer the arbitration. The authority and obligations of the administrator are provided in these rules.

4. Delegation of Duties

The duties of the AAA may be carried out through such representatives or committees as the AAA may direct.

5. The National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Employee Benefit Plan Claims Arbitrators and shall nominate arbitrators therefrom, as hereinafter provided.

6. The Office of the Tribunal

The general office of a tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its regional offices.

7. Initiation under an Arbitration Provision in a Benefit Plan

Any plan participant or beneficiary whose claim for benefits has been denied, in whole or in part, may initiate an arbitration under these rules by writing to any AAA office.

The request for arbitration should briefly outline the nature of the claim. The request must be accompanied by a copy of the Denial of Claim where available and by a filing fee of \$150.

Upon receipt by the AAA of the request for arbitration (demand) and the appropriate filing fee, the AAA shall send to the plan written notice that arbitration has been requested. The notice shall state the name of the applicant and the file number set forth on the Denial of Claim where available. Upon receipt of written notice from the AAA, the plan shall send \$350 to the AAA for its share of the filing fee.

8. Initiation under a Submission

An arbitration under these rules may, in the absence of an arbitration provision plan, be initiated by filing at any regional office of the AAA two copies of a written agreement to arbitrate under these rules (submission), signed by the parties and setting forth the nature of the dispute and the remedy sought, together with the appropriate filing fee as provided in Section 7.

9. Initiation and Filing Fees in Special Circumstances

In the event of extreme hardship on the part of any party, the AAA may defer or reduce the filing fee.

10. Other Fees and Expenses

A fee of \$50 is payable by each party for each second or subsequent hearing that is either clerked by the AAA or held in a hearing room provided by the AAA.

Other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of AAA representatives and the expenses of any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

A fee of \$50 for an adjournment of any scheduled hearing is payable by the party causing same. If the adjournment is mutually requested by the parties, the fee shall be borne equally.

11. The Arbitrator's Fee

Unless mutually agreed otherwise, the arbitrator shall be compensated at an agreed per diem for each hearing or other conference, for the making of the award, and for the preparation of the accompanying statement of reasons for the award. Any arrangement for the compensation of the arbitrator shall be made through the AAA and not directly by the arbitrator. In the absence of agreement between the parties, an appropriate per diem will be established by the AAA.

12. Grouping of Claims for Hearing

Claims involving common issues of fact against the same plan may be scheduled for hearing before the same arbitrator whenever the parties and the arbitrator so agree.

13. Locale of Hearing

Unless the parties otherwise agree, a hearing shall be held at the AAA regional office closest to the administrative headquarters of the plan. If that office is more than 200 miles from the principal residence of the claimant, the hearing shall be held in either the AAA regional office or the city of the US District Court nearest to the place of the participant's covered employment under the plan or, if the participant is no longer employed, the place of last covered employment. In cases of undue hardship, the AAA shall have the final power to determine the locale of the hearing.

14. Number of Arbitrators

Unless mutually agreed otherwise by the parties, the dispute shall be heard and determined by one neutral arbitrator.

15. Appointment from the Panel

The arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall submit simultaneously to each party an identical list of names of persons chosen from the National Panel of Employee Benefit Plan Claims Arbitrators. Each party shall have seven business days from the mailing date within which to strike any name on the list, number the remaining names to indicate the order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree upon any of the persons named, if those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the administrator shall have the power to make the appointment from among the other members of this panel without the submission of any additional list.

16. Qualifications of the Arbitrator

No person with a personal, financial, or other interest in the outcome of the arbitration shall serve as arbitrator in any arbitration. An arbitrator shall disclose to the AAA any circumstance likely to create a presumption of bias that might disqualify that person from serving as an impartial arbitrator. Upon receipt of such information, the AAA shall immediately disclose it to

the parties. If a party challenges an arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive. If an arbitrator should resign, be disqualified, or be otherwise unable to perform the duties of office, the AAA shall appoint another arbitrator to the case.

17. Oaths

Before proceeding with the performance of arbitral duties, the arbitrator shall take an oath of office. The arbitrator has discretion to require witnesses to testify under oath if requested by either party or if the law so requires.

18. Conciliation

At the hearing, the arbitrator shall, if the parties agree, attempt to conciliate the dispute. If the dispute is not resolved, the arbitrator shall retain jurisdiction to hear and decide the dispute.

19. Time and Place

The arbitrator shall fix the time and place within the determined locale for each hearing. The AAA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

20. Hearing on Documents Only

The parties may agree in writing to waive an oral arbitration hearing. Any hearing on documents only shall be conducted pursuant to these rules and the administrative filing fee as provided in Section 7 shall apply.

21. Adjournments

A request for an adjournment shall be made in writing to the AAA. The arbitrator may for good cause shown adjourn the hearing upon the request of a party or upon his or her own initiative, and shall adjourn when all of the parties agree thereto.

22. Representation by Counsel

Any party may be represented by counsel or any other person designated by the party in writing to the AAA.

23. Stenographic Records

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of such record.

24. Interpreters

Any party wishing an interpreter shall make all arrangements directly with an interpreter and shall assume the costs of such service.

25. Attendance of Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

26. Evidence

The parties may offer such evidence as they desire and shall produce such additional evidence as

the arbitrator may deem necessary to a determination of the dispute. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. Documents, affidavits, memoranda, and other written material offered by the parties may be considered by the arbitrator. When authorized by law, the arbitrator may subpoena witnesses or documents upon his or her own initiative or upon the request of any party.

27. Arbitration in the Absence of a Party

The arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of that party. The arbitrator shall require the other party to submit such evidence as may be required for the making of an award.

28. Closing of Hearings

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 26 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of another agreement by the parties, upon the closing of the hearings.

29. Reopening of Hearings

The hearings may be reopened on the motion of the arbitrator or upon application of a party at any time before the award is made. If the reopening of the hearings would prevent the making of the award within the specific time agreed upon by the parties in the document out of which the controversy has arisen, the matter may not be reopened unless the parties agree upon the extension of that time. When no specific date is fixed in the document, the arbitrator may reopen the hearings, and shall have thirty days from the closing of the reopened hearings within which to make an award.

30. Time of the Award

Unless otherwise agreed to by the parties, the award shall be made promptly and no later than thirty days from the date of closing the hearings or, if the hearing has been on documents only, from the date of transmittal of the final statements and proofs to the arbitrator.

31. Form and Scope of the Award

The award shall be in writing and accompanied by a brief statement of the reasons for the decision. The arbitrator may, in the award, assess administrative filing fees, costs, expenses, arbitrator compensation, and *reasonable attorney fees in favor of any party*. If any fees or expenses are due the AAA, the arbitrator shall, in the award, assess them in favor of the AAA.

32. Delivery of the Award to Parties

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to the parties of their designated representatives at the last known

address, or any other form of service permitted by law.

33. Applications to Court and Exclusion of Liability

- a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- b. Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.
- c. Parties to these rules shall be deemed to have consented that judgment upon the award rendered by the arbitrator(s) may be entered in any federal or state court having jurisdiction thereof.
- d. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

34. Communication with Arbitrator and Serving of Notice

- a. There shall be no communication between the parties and a neutral arbitrator other than at oral hearings. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.
- b. Each party to an agreement that provides for arbitration under these rules shall be deemed to have consented that any paper, notice, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made thereunder may be served upon the party by mail addressed to the party or its attorney at the last known address or by personal service, within or without the state wherein the arbitration is to be held (whether such party be within or without the United States of America), provided that a reasonable opportunity to be heard with regard thereto has been granted to that party.

35. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state any objection thereto in writing shall be deemed to have waived the right to object.

36. Deposits

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance.

37. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the powers and duties of the arbitrator. All other rules shall be interpreted and applied by the AAA.

Administrative Fees

Initial Administrative Fee

The initial administrative fee is \$500, due and payable at the time of filing (\$150 by the filing party and \$350 by the plan).

Additional-Hearing Fees

A fee of \$50 is payable for each second or subsequent hearing that is clerked by the AAA or held in a hearing room provided by the AAA.

Adjournment Fees

A fee of \$50 is payable for an adjournment of any scheduled hearing.

Overtime

A fee of \$10 per hour is payable for hearings held on Saturdays, legal holidays, or after 6 p.m. on weekdays, provided that these hearings are either clerked by the AAA or held in a hearing room provided by the AAA.

Refund Schedule

If the AAA is notified that the matter has been settled or withdrawn before the original due date for the return of the first list, all of the fee in excess of \$150 will be refunded; otherwise, no refund will be made.

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