

[As Revised Through 8/28/03]

## **INTRA-INDUSTRY CLAIMS AGREEMENT**

To Promote Cooperation among CARRIERS,  
early investigation of accidents, and equitable  
disposition of certain claims, the participating  
CARRIERS agree as follows:

## PREAMBLE

This Agreement is in two parts. Part I applies to ACCIDENTS which occur while a CAR is not IN TRANSIT. It applies only to injuries to OTHER PARTIES and damage to property of OTHER PARTIES. It does not apply to lading or other property of OTHER PARTIES in the care, custody, or control of CARRIER or RAILROAD or to CARRIER or RAILROAD property. Part II applies only to injuries to CARRIER employees or damage to the property of CARRIER employees.

## PART I

Rule 1. The following definitions apply to Part I of this agreement:

- (a) ACCIDENT: Any occurrence involving a CAR which meets all of the following conditions:
1. The occurrence is alleged to have caused personal injury or property damage (except lading) to OTHER PARTIES; and
  2. The CAR was not IN TRANSIT at the time of the occurrence; and
  3. The occurrence is alleged to have been caused by a DEFECT.
- (b) APPROPRIATED CAR: One selected by a shipper for his use without having been inspected or offered by a CARRIER.
- (c) CAR: A railroad car, regardless of ownership, which has been handled by one or more CARRIERS during a MOVEMENT in which an ACCIDENT occurs. A railroad car includes all its appurtenances and all equipment fixed or loaded thereon.
- (d) CARRIER: A railroad company signatory to this agreement.
- (e) COSTS: All expenses directly flowing from an ACCIDENT, including amounts paid in compromise or satisfaction of claim(s), lawsuit(s), or judgment(s); for depositions, subpoenas, maps, drawing, photographs and other demonstrative evidence, witness fees and expenses, jury and other court costs, transcripts of testimony, printing of briefs and records on appeal or review; wages of contract employees for time lost from regular duties while attending court or participating in the taking of depositions; and fees for services of doctors, lawyers, photographers, and all other experts and consultants, and arbitration fees. The term COSTS does not include damage to cars, track, or other plant or equipment of CARRIERS or any compensation for services paid to, or expenses incurred by, full-time non-contract employees of a CARRIER.

- (f) DEFECT: Any condition of a CAR, or of its lading including the loading or securement thereof, which is alleged to have been the cause of an ACCIDENT leading to claim(s) or lawsuit(s).
- (g) IN TRANSIT: That period of a CAR'S use when it is actually put in motion by a CARRIER or a RAILROAD or is being prepared by employees or agents of a CARRIER or a RAILROAD to be put in motion, including all handling to destination. This includes relocation of the CAR by a CARRIER or a RAILROAD within an area under control of the same shipper or of the same consignee and CARS on interchange tracks. [Amended 2-5-78]
- (h) MOVEMENT: A single journey beginning with the placing of a CAR by a POSSESSING CARRIER, or the appropriation of a CAR by a shipper for loading, through its loading, dispatch, interchange or delivery to consignee, including the period after the CAR is made empty, and until the CAR is withdrawn empty from the consignee, or is assigned to consignee for another MOVEMENT, or is appropriated by consignee for another MOVEMENT (see definition of "POSSESSING CARRIER"). [Amended 6-23-74]
- (i) ORIGINATING CARRIER: First CARRIER in a MOVEMENT.  
NOTE: This term does not apply to a CARRIER that does nothing more than handle a CAR for switching charge at origin.
- (j) OTHER PARTIES: Any person, corporation, association, partnership, or legal entity other than a CARRIER or a RAILROAD or an employee of a CARRIER or a RAILROAD. [Amended 2-5-78]
- (k) POSSESSING CARRIER: A CARRIER in possession of a CAR or which has made it available to a shipper or consignee during which time an ACCIDENT occurs. A CARRIER which delivers a CAR to a SWITCHING RAILROAD shall be regarded as a POSSESSING CARRIER in connection with an accident occurring during the time the SWITCHING RAILROAD is in possession of a CAR or has made it available to a shipper or consignee. A CARRIER shall be

considered to have possession of a CAR when such CAR has been placed by another CARRIER on a track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery. A CAR that may be rejected by the receiving CARRIER shall be considered as remaining in the possession of that CARRIER until such CAR has been placed or left on the appropriate track for return to the delivering CARRIER. [Amended 6-23-74] A SWITCHING CARRIER at origin shall not be regarded as a POSSESSING CARRIER. A CARRIER that makes available an empty CAR to a shipper shall become a SWITCHING CARRIER when a written record exists prior to an ACCIDENT of the intent of the shipper to bill the CAR OUT through a CARRIER other than the CARRIER that placed or made available the CAR. [Amended 8-3-88] A SWITCHING CARRIER, when it is the POSSESSING CARRIER at destination of a MOVEMENT or at STOP-OFF POINT, may, within thirty (30) days of receipt of notice of an ACCIDENT which, in the judgment of the SWITCHING CARRIER, will result in claim(s) with settlement value exceeding \$10,000 in the aggregate, assign all obligations of a POSSESSING CARRIER, except as provided in Rule 5, to the CARRIER which delivered the CAR to the SWITCHING CARRIER, with notice of assignment to the car owner, if a CARRIER, and other CARRIERS participating in the MOVEMENT. The CARRIER to whom the assignment is made shall be regarded as the POSSESSING CARRIER, except as provided in Rule 5. When a SWITCHING CARRIER is the POSSESSING CARRIER at destination of a MOVEMENT, or at STOP-OFF POINT, a CARRIER participating in the MOVEMENT may, with the concurrence of other CARRIERS participating in the MOVEMENT, with notice to the CAR owner, if a CARRIER, assume all obligations of a POSSESSING CARRIER, except as provided in

Rule 5, with notice to the SWITCHING CARRIER. [Amended 2-5-78]

- (l) RAILROAD: A railroad company not signatory to this agreement.
- (m) REVENUE: Money received by CARRIER(S) from a MOVEMENT on the basis of tariffs, Sec. 22 quotations, or contracts for the transportation of freight.
- (n) STOP-OFF POINT: A point where a CAR is delivered in the course of a MOVEMENT for partial loading or unloading.
- (o) SWITCHING CARRIER: A CARRIER which does not participate in the through freight rate but handles a CAR for a switching charge.
- (p) SWITCHING RAILROAD: A RAILROAD which does not participate in the through freight rate but handles a CAR for a switching charge. [New Rule 6-23-74]

Rule 2. This agreement applies only when all participants in a MOVEMENT are CARRIERS as defined in Rule 1(d). The owner of a CAR shall not be regarded as a participant in a MOVEMENT solely because of CAR ownership. A SWITCHING RAILROAD shall not be regarded as a participant in a MOVEMENT. A MOVEMENT shall be regarded as completed when an ACCIDENT occurs. None of these rules shall affect in any way the rights of claimants or the right or obligations of CARRIERS to seek recovery or contribution from RAILROADS, SWITCHING RAILROADS, or OTHER PARTIES; nor shall they or this agreement confer any right or benefit on any RAILROAD, SWITCHING RAILROAD, or OTHER PARTY. Neither shall any of the rules assigning responsibility for payment of COSTS to CARRIERS be construed as relieving RAILROADS, SWITCHING RAILROADS or OTHER PARTIES of liability for such COSTS. As among CARRIERS, this agreement shall govern irrespective of negligence or fault. [Amended 6-23-74] Notwithstanding any other provision of this agreement, no party to this agreement shall be liable under this agreement for punitive or exemplary damages assessed against any other party. In any case in which punitive damages are sought, the party

responsible for the defense of the case shall promptly notify every party against whom punitive damages are sought, and each party may, at its sole expense, elect to select its own counsel and to participate directly in the defense of the case. [Amended 7-15-03]

Rule 3. Upon receipt of notice of an ACCIDENT, the POSSESSING CARRIER shall forward copy of initial report, together with copy of waybill covering CAR MOVEMENT, to the owner of the CAR, if a CARRIER, and all CARRIERS participating in the MOVEMENT, requesting appropriate investigation be made by each CARRIER. Within 60 days of receipt of such notice, all CARRIERS involved shall forward to POSSESSING CARRIER, with copy to other CARRIERS involved and CAR owner, if a CARRIER, a complete written report of their investigations. [Amended 5-19-81]

Rule 4. When an ACCIDENT occurs, the POSSESSING CARRIER, regardless of the CAR'S ownership or the history of its loading, routing, or interchange, shall:

(a) Investigate the ACCIDENT.

(b) Negotiate, settle and pay claim(s) or lawsuit(s), subject to the following:

1. POSSESSING CARRIER may, without concurrence of other interested CARRIERS, and prior to complying with Rule 6, promptly settle any claim(s) or lawsuit(s) resulting from that ACCIDENT, up to a limit of \$10,000.00 in the aggregate.
2. Following compliance with Rule 6, POSSESSING CARRIER may, without concurrence of other interested CARRIERS, settle any claim(s) or lawsuit(s) resulting from that ACCIDENT to a limit of \$25,000.00 in the aggregate.
3. Following compliance with Rule 6, and with concurrence of all other interested CARRIERS as to amount, POSSESSING CARRIER may settle any claim(s) or lawsuit(s) resulting from that ACCIDENT.
4. Ultimate distribution of the COSTS of that ACCIDENT will be governed by the provisions of this agreement.

5. Following receipt of investigation file, as provided in Rule 6, any interested CARRIER may acknowledge full responsibility for COSTS flowing from that ACCIDENT and thereafter may discharge the responsibility of POSSESSING CARRIER for settlement of claim(s) or lawsuit(s).

(c) Defend any lawsuit(s), and satisfy any judgment(s) resulting therefrom, including interest thereon.

Rule 5. The POSSESSING CARRIER shall assume, and shall not seek indemnification or any contribution from other CARRIERS for, the first \$2,500 of COSTS in the aggregate resulting from a single ACCIDENT.  
[Amended 5-19-81 and 7-13-82]

Rule 6. When the investigation indicates to the POSSESSING CARRIER that sole or joint responsibility under this agreement for the DEFECT rests upon a CARRIER or CARRIERS other than or in addition to the POSSESSING CARRIER, the POSSESSING CARRIER shall forward to CARRIER or CARRIERS by registered or certified mail copy of the investigation file together with a notice which shall include:

- (a) A brief explanation of how, when, and from whom the first report of the ACCIDENT was received.
- (b) Date and place of ACCIDENT, name(s) of person(s) injured or killed, nature of injury or description of property damaged, and probable value of claim(s).
- (c) All facts concerning ownership, number, origin, routing, junction points, inspections, cargo, and destination of the CAR during the MOVEMENT in which the ACCIDENT occurred.
- (d) The DEFECT alleged to have caused the ACCIDENT.
- (e) A statement explaining why responsibility for the DEFECT is believed to rest elsewhere than solely with the POSSESSING CARRIER.

A copy of such notice shall, in all instances, be sent to the owner of the CAR, if a CARRIER, and to all CARRIERS involved in the MOVEMENT.

- Rule 7. If a report of any ACCIDENT or claim therefor is received by a CARRIER other than the POSSESSING CARRIER, the CARRIER receiving the report must notify the POSSESSING CARRIER at once, and the POSSESSING CARRIER'S obligations under Rule 4 shall begin upon receipt of such notice.
- Rule 8. (a) A POSSESSING CARRIER receiving notice of an ACCIDENT after the CAR has left its possession may require any other CARRIER in possession of the CAR to make a thorough inspection of said CAR, including photographs, and furnish the CARRIER which is on notice a complete report of that inspection within 30 days.
- (b) When a report furnished under (a) of this rule indicates a change in the condition of the CAR after it left possession of the CARRIER which is on notice, that CARRIER may require any CARRIERS which were thereafter in possession of the CAR to furnish a complete record of their handling of any repairs to the CAR.
- Rule 9. Nothing in this agreement shall affect rights or duties of CARRIERS arising from contracts or agreements among CARRIERS.
- Rule 10. COSTS of ACCIDENTS shall be borne only by CARRIERS involved in the MOVEMENT during which such ACCIDENTS occur, except as provided in Rule 14.
- Rule 11. CAR ownership alone does not create any liability under this agreement, except as provided in Rule 14.
- Rule 12. The ORIGINATING CARRIER shall bear full responsibility for COSTS of ACCIDENTS occurring in connection with the MOVEMENT that are attributed to DEFECTS which can be shown to have existed in the CAR when placed, except as provided in Rules 5 and 14. [Amended 6-23-74]
- Rule 13. When an ACCIDENT is attributed to a DEFECT which can be shown to have existed at the time the CAR was appropriated by a shipper, the full responsibility for COSTS shall be borne by the ORIGINATING CARRIER, except as provided in Rules 5 and 14.

- Rule 14. (a) When it can be shown that repair of a CAR by a CARRIER produced a concealed DEFECT or concealed a DEFECT causing an ACCIDENT within 90 days after the CAR was placed in service following repair, the CARRIER which released the CAR for service after such repair shall bear the full responsibility for the COSTS except as provided in Rule 5.
- (b) When, in the opinion of a majority of a quorum of the General Committee, Mechanical Division, Association of American Railroads, the design or construction of the CAR produced a concealed DEFECT or concealed a DEFECT causing an ACCIDENT after the CAR was placed in service, the CARRIER placing the CAR in service shall bear the full responsibility for COSTS, except as provided in Rule 5. No representative of a CARRIER directly concerned in a dispute under this subsection shall participate in the vote of the General Committee or be counted in determining a quorum of that Committee.
- (c) When it can be shown that design, construction, or repair of a CAR by a RAILROAD, SWITCHING RAILROAD, or OTHER PARTIES produced or failed to correct a DEFECT causing an ACCIDENT, COSTS flowing from such ACCIDENT which CARRIER(S) sustain(s) shall be apportioned in accordance with terms of this agreement. No settlement of claim(s) or lawsuit(s) arising from such ACCIDENT in excess of \$2,500 in the aggregate may be made by paying CARRIER without consent of all participating CARRIERS as to amount, Rule 4 to the contrary notwithstanding. Upon CARRIERS' agreement as to amount, but disagreement as to procedure respecting RAILROAD, SWITCHING RAILROAD, or OTHER PARTIES, settlement shall be made, assignment of claim taken, and paying CARRIER shall then proceed as provided in Rule 20. [Amended 6-23-74, 5-19-81, and 7-13-82]
- Rule 15. Except as provided in Rule 5, full responsibility for COSTS of an ACCIDENT attributed to placement of cargo in a CAR of improper type or class shall be borne by the CARRIER which placed the CAR for loading, if investigation shows the placing CARRIER knew the nature of

the intended cargo; otherwise, the COSTS shall be borne by the ORIGINATING CARRIER.

Rule 16. (a) When it can be shown that a collision, derailment, wreck, or other handling during a MOVEMENT produced a DEFECT which caused an ACCIDENT later in the same MOVEMENT, the CARRIER(S) shown to be responsible for such handling shall bear full responsibility for the COSTS except as provided in Rule 5. Where more than one CARRIER'S handling produced or worsened the DEFECT, the responsible CARRIERS shall share COSTS of the ACCIDENT equally, regardless of division of REVENUE from the MOVEMENT. [Amended 6-23-74]

(b) When it can be shown that a collision, derailment, wreck, or other handling by a SWITCHING RAILROAD produced a DEFECT which caused an ACCIDENT, COSTS flowing from such ACCIDENT which CARRIER(S) sustain(s) shall be apportioned in accordance with terms of this agreement. No settlement of claim(s) or lawsuit(s) arising from such ACCIDENT in excess of \$2,500 in the aggregate may be made by paying CARRIER without consent of all participating CARRIERS as to amount, Rule 4 to the contrary notwithstanding. Upon CARRIERS' agreement as to amount, but disagreement as to procedure respecting a SWITCHING RAILROAD, settlement shall be made, assignment of claim taken, and paying CARRIER shall then proceed as provided in Rule 20. [Amended 6-23-74, 5-19-81, and 7-13-82]

Rule 17. When an ACCIDENT occurs at the destination of a MOVEMENT or at a STOP-OFF POINT because of a DEFECT, and investigation does not establish that the DEFECT existed when the CAR was placed for loading, or fix the time or place during the MOVEMENT when the DEFECT came into existence or determine the party responsible under provisions of Rule 14, COSTS shall be apportioned as follows:

(a) SWITCHING CARRIERS shall pay nothing except as provided in (b) hereof.

- (b) POSSESSING CARRIER shall pay the first \$2,500. [Amended 5-19-81 and 7-13-82]
- (c) The remaining COSTS shall be apportioned among all CARRIERS that participated in the MOVEMENT to the destination or STOP-OFF POINT, except as provided in (a) hereof, in shares proportionate to the share of each CARRIER in the total REVENUE calculated without reference to charges of SWITCHING CARRIERS.

- Rule 18. (a) When it can be shown that shifting, leaking, or other DEFECT of lading in or on CARS resulting from improper loading or lack of appropriate doorway protection caused an ACCIDENT at destination or STOP-OFF POINT, all COSTS shall be borne by the ORIGINATING CARRIER except as provided in Rules 5 and 18(b).
- (b) When it can be shown that shifting, leaking, or other DEFECT of lading in or on CARS resulting from improper loading or securement of lading at STOP-OFF POINT caused an ACCIDENT at destination, the CARRIER transporting such CARS from STOP-OFF POINT shall be treated as the ORIGINATING CARRIER and shall bear all COSTS except as provided in Rule 5.
- (c) When it can be shown that shifting, leaking, or other DEFECT of lading in or on CARS resulting from improper handling of CAR caused an ACCIDENT at destination or STOP-OFF POINT, all COSTS shall be borne by the CARRIER(S) responsible for such improper handling except as provided in Rule 5.
- (d) When responsibility cannot be fixed as indicated in (a) or (b) or (c) of this rule, COSTS shall be apportioned among CARRIERS participating in the MOVEMENT as provided in Rule 17.

Rule 19. When lawsuits are brought against more than one CARRIER on account of an ACCIDENT, all of the interested CARRIERS shall be represented by counsel for the POSSESSING CARRIER. This provision shall not bar advice and assistance to such counsel from the legal staffs of other

interested CARRIERS. When it is agreed by all interested CARRIERS, the defense may be conducted by other counsel.

- Rule 20. (a) It shall be the duty of the CARRIER which negotiates or defends the claim(s) or lawsuit(s) arising from an ACCIDENT to seek recovery or contribution from RAILROADS, SWITCHING RAILROADS, or OTHER PARTIES which are responsible in whole or in part for the DEFECT(S) or ACCIDENTS(S). By mutual agreement, the CARRIER so designated may delegate this duty to another CARRIER. [Amended 6-23-74]
- (b) Where COSTS have been apportioned among CARRIERS, any net sums recovered by any CARRIER from RAILROADS, SWITCHING RAILROADS, or OTHER PARTIES shall be distributed to the CARRIERS in the same proportion as the shares of the COSTS, which they have paid. [Amended 6-23-74]
- (c) A CARRIER petitioning for arbitration, and each other CARRIER involved in a dispute, must declare the amounts of any recoveries, contributions, or distributions of COSTS it has received, and the source.
- Rule 21. Each case in which the CARRIERS fail to reach an accord on the assignment or apportionment of COSTS on the basis of this agreement must be submitted to binding arbitration as hereinafter provided.

### ADMINISTRATION

Upon execution of this agreement by at least fifteen railroad companies, the Director, Claims Research and Analysis of the Association of American Railroads, who shall serve as Permanent Secretary and Treasurer of the Administrative Committee, will call upon each accepting CARRIER to appoint the head of its claim department, or such other person in its employ as it designates, to serve as a member of an Administrative Committee. This Committee shall administer the agreement. Membership in the Association of American Railroads shall

not be a prerequisite to execution of or participation in the agreement by any railroad company. [Amended 1-28-73]

- Rule 22. The Administrative Committee shall elect a Chairman, a First Vice Chairman, and a Second Vice Chairman from among its members. The Chairman and Vice Chairmen shall serve for a one-year term. The Chairman may not succeed himself. [Amended 1-25-76]
- Rule 23. The Administrative Committee shall report annually to the President of the Association, or more frequently as necessary.
- Rule 24. Procedures of meeting of the Administrative Committee shall be governed by Robert's Rules of Order.
- Rule 25. The Administrative Committee shall publish this agreement and any changes in or amendments thereto and shall distribute to all CARRIERS the decisions of arbitrators and appeal arbitrators.
- Rule 26. (a) Proposed amendments to this agreement shall be submitted to the Secretary in writing. The Secretary shall mail any such proposals to each member of the Administrative Committee, who may send written comments thereon to the Secretary. The Secretary, prior to the next meeting of the Administrative Committee, shall distribute to the members of the Committee copies of all such comments that may have been received and the proposals shall be docketed for a vote at the next meeting of the Administrative Committee or, at the discretion of the Chairman, by letter ballot of the members. Any amendment thus adopted shall become effective one hundred twenty days after the vote. No amendment shall be adopted or become effective unless it has received the affirmative vote of at least two-thirds of the members of the Administrative Committee who have voted on such amendment, provided that the number of members voting constitutes a quorum as defined in the IICA Rules of Order. [Amended 10-28-87]
- (b) No amendment to this agreement shall apply to ACCIDENTS that may have taken place prior to the effective date of such amendment.

- Rule 27. Acceptance of this agreement shall be signified by delivering to the Secretary a copy thereof duly executed by any railroad company. This agreement shall not apply to any ACCIDENT that shall have occurred prior to the effective date of the agreement or prior to the date of execution of the agreement by a CARRIER sought to be charged with responsibility under the agreement respecting such ACCIDENT. Any CARRIER may withdraw from this agreement upon ninety days' written notice in advance filed with the Secretary. Upon receipt of such notice the Secretary shall notify all other CARRIERS. No such withdrawal shall affect any rights or duties of any CARRIER under this agreement which shall have accrued prior to the effective date of withdrawal. [Amended 1-28-73]
- Rule 28. Arbitration under this agreement shall be conducted by arbitrators and appeal arbitrators, and the decision of any panel thereof shall be by a majority of such arbitrators or appeal arbitrators. A panel of three arbitrators shall have original jurisdiction of all disputes submitted for arbitration, and their decision shall be final and binding on all parties in the absence of an appeal. Such appeal may be taken by any party to the dispute within ninety days after receipt of the decision of the arbitrators, and the appeal shall be decided by a panel of five appeal arbitrators whose decision shall be final and binding on all parties. Expenses of arbitration shall be apportioned in accordance with the provision of Rules 41 and 43, except that in the case of an appeal in a case which involves COSTS not exceeding \$25,000 in the aggregate the appellant(s) shall bear all expenses of appeal.
- Rule 29. Initially, six arbitrators and five appeal arbitrators shall be selected by the Secretary by lot from among the members of the Administrative Committee, excluding the Chairman and Vice Chairmen. They shall serve until the election of arbitrators and appeal arbitrators as provided by Rule 30. [Amended 1-25-76]
- Rule 30. (a) Within one year after the effective date of this agreement, which shall be the first day on which the Secretary has received at least fifteen copies of

this agreement duly executed by railroad companies, a panel of twenty-four arbitrators shall be elected by the Administrative Committee from among the candidates nominated for such service as provided in Rule 31. The eight candidates who receive the highest number of votes shall serve terms of three years from date of election; the eight candidates who receive the next highest number of votes shall serve terms of two years from date of election; and the eight candidates who receive the next highest number of votes shall serve terms of one year from date of election. All such arbitrators shall serve as such until their successors are elected. Annually thereafter, at a time to be fixed by the Administrative Committee, eight arbitrators shall be elected in the same manner to serve terms of three years beginning at the expiration of the terms of the outgoing arbitrators. Any arbitrator shall be eligible to succeed himself. [Amended 1-28-73]

- (b) At the same time, a panel of fifteen appeal arbitrators shall be elected. The five candidates who receive the highest number of votes shall serve terms of three years from date of election; the five candidates who receive the next highest number of votes shall serve terms of two years from date of election; and the five candidates who receive the next highest number of votes shall serve terms of one year from date of election. All such appeal arbitrators shall serve as such until their successors are elected. Annually thereafter, at a time to be fixed by the Administrative Committee, five appeal arbitrators shall be elected in the same manner to serve terms of three years beginning at the expiration of the terms of the outgoing appeal arbitrators. Any appeal arbitrator shall be eligible to succeed himself.

Rule 31. Each CARRIER, on call of the Chairman of the Administrative Committee, may nominate not to exceed three candidates for arbitrator and not to exceed three candidates for appeal arbitrator. Neither the Chairman nor the Vice Chairmen shall be eligible for nomination while holding office. Such nominations shall be in writing submitted to the

Secretary. The making of any such nomination shall be deemed a certification by the nominating CARRIER that the candidates it nominates are employed by its claims department or are its employees experienced in claims work, are personally willing to serve, and will be permitted to serve by the CARRIER. At the expiration of the time for receipt of nominations, the Secretary shall distribute the lists of nominees for arbitrators and appeal arbitrators to all members of the Administrative Committee at least thirty days prior to the date of election. Elections shall be held by letter ballot to be executed by the representative of each CARRIER on the Administrative Committee or a person designated by him in writing as his proxy. Each voter shall be entitled to vote for as many candidates as there are vacancies to be filled in any election. [Amended 1-25-76]

- Rule 32. The Administrative Committee shall appoint arbitrators and appeal arbitrators as necessary to serve out the remainder of terms of any of either class who die, resign, or become disabled from serving. The Administrative Committee is also authorized to appoint additional arbitrators or appeal arbitrators on an *ad hoc* basis when such action is required by an accumulation of disputes awaiting consideration.
- Rule 33. (a) Following settlement of claim(s) or lawsuit(s), paying CARRIER shall send notice of distribution to other interested CARRIERS by registered or certified mail. Within sixty days from the date of receipt of such distribution notice, distributees must accept or reject the distribution proposed and inform all other interested CARRIERS of their acceptance or rejection. Payment shall accompany each acceptance. Failure to respond shall be treated as acceptance. If any CARRIER shall have rejected the proposed distribution, the paying CARRIER or any rejecting CARRIER may request arbitration within ninety days from receipt of notice of rejection by filing a request for arbitration with the Secretary. Failure of paying CARRIER to request arbitration within ninety days after another CARRIER has rejected its proposed distribution shall be treated as

a waiver of the rejected claim unless another CARRIER has requested arbitration. No request for arbitration shall be valid unless such request shall be accompanied by a check in the amount of \$500 payable to the Treasurer for deposit by him in an arbitration fund. No request for arbitration may be withdrawn without the consent of all interested CARRIERS. The \$500 payment shall not be refunded in the case of withdrawal.

- (b) In the event the distribution proposed by the paying CARRIER in the notice of distribution is rejected by any of the interested CARRIERS, and subsequently that distribution is agreed to by all of the interested CARRIERS or is imposed through Arbitration, then in addition to the proposed distribution the paying CARRIER shall receive from each of the interested CARRIERS who has not made payment in accordance with the Rule interest on the unpaid distribution. Interest shall be set at a rate equal to the Prime Rate, as announced by the Chase Manhattan Bank, N.A., plus 2% (hereinafter "Interest"). Interest shall accrue from a date 60 days following the interested CARRIER'S receipt of notice of distribution until full payment, including interest, is paid to the paying CARRIERS. Any interested CARRIER may avoid interest by, within 60 days of receipt of the notice of distribution, accepting or rejecting the original distribution and paying its full share of COSTS as proposed by the paying CARRIER. In the event that payment is made by a CARRIER in accordance with the notice of distribution in this Rule, but all of the interested CARRIERS do not accept the original distribution or the original distribution is not upheld by Arbitration, then the paying CARRIER shall pay Interest on all COSTS which the paying CARRIER must refund to such interest CARRIER. Interest shall accrue from the date the payment was received from the interested CARRIER until the date of the refund by the paying CARRIER.
- [New Rule 1-1-97]

Rule 34. Appeal arbitration may be initiated by the filing of a written request with the Secretary within ninety days from receipt of the arbitrators' decision

by any CARRIER that was a party to the original arbitration. No such request shall be valid unless accompanied by a check for \$500 payable to the Treasurer for deposit by him in the arbitration fund. No request for appeal arbitration may be withdrawn without the consent of all interested CARRIERS. The \$500 payment shall not be refunded in the case of withdrawal.

- Rule 35. No request for arbitration may be made by a paying CARRIER until the claims(s) or lawsuit(s) have been paid or settled or any judgment, including interest, has been satisfied.
- Rule 36. The Secretary shall maintain lists of arbitrators and appeal arbitrators. The order in which they are to be assigned to hear disputes shall be kept secret by him. Whenever arbitration or appeal arbitration of a dispute has been requested, it shall be the responsibility of the Secretary to assign the dispute to the three arbitrators or five appeal arbitrators next on the list who are not personally or through employment or otherwise interested in the outcome of the dispute. When this has been done, he shall notify all parties interested in the dispute of the names, title, and addresses of the persons to whom it has been assigned. If any party or arbitrator or appeal arbitrator can show good cause why one or more of the persons assigned should not sit on the dispute, this must be done by letter to the Secretary within fifteen days of receipt of such notice; otherwise, at the expiration of that time, the assignment shall be final. If good cause for removal of one or more arbitrators or appeal arbitrators has been shown within the time limit, the Secretary shall assign one or more new arbitrators or appeal arbitrators to the dispute from the list, subject to the same conditions.
- Rule 37. Paying CARRIER must submit a copy of the complete file in the dispute to each of the arbitrators within thirty days after they are finally assigned. The file shall include all statements, photographs, medical reports, transcripts of testimony, and other documents of all kinds which are relevant to the issues. Evidence of payment of COSTS shall be submitted. Copies of all papers thus submitted must be sent at once to all other

interested CARRIERS if they have not previously been sent.

Communications between counsel and officers of CARRIERS that would be privileged in a court of law may be withdrawn from the file before it is submitted, provided a brief general description of each such communication is transmitted with the file.

Rule 38. Within thirty days after receipt of the papers described in Rule 37, each CARRIER interested in the dispute shall send to the arbitrators and to each other interested CARRIER a statement of its position in the dispute and a list of facts to which it is willing to stipulate. If COSTS paid in the aggregate shall have exceeded \$25,000, any interested CARRIER may at this time request in writing the right to produce before the panel of arbitrators witnesses who shall be subject to cross-examination by other interested CARRIERS. Any CARRIER which produces witnesses shall pay the cost of a transcript of their testimony, both direct and cross, for the use of the arbitrators and for inclusion in the record.

Rule 39. The record before the arbitrators shall consist of the papers described in Rules 37 and 38, any testimony or argument that may be transcribed in accordance with Rule 38, and any briefs or proposed findings that may be filed; and the record before the appeal arbitrators, if there should be an appeal arbitration, shall consist of the record before the arbitrators and the award of the arbitrators. Awards shall all be made on the record and in accordance with the provisions of this agreement. In any case in which the arbitrators or appeal arbitrators determine that the facts of record are not governed by the provisions of this agreement, the arbitration shall be dismissed.

Rule 40. (a) The arbitrators shall render an award in a dispute within ninety days following their receipt of the claim file and all related papers, including stipulations and statements of position. The award shall be rendered in writing, and copies shall be sent to all interested CARRIERS. All documents furnished to the arbitrators for consideration in the dispute

shall be forwarded to the Secretary, who shall keep the record or a copy thereof on file.

- (b) The award shall contain findings of fact and an outline of the contentions of the interested CARRIERS, and shall explain the interpretation of the applicable rules and the reasoning of the arbitrators in arriving at their conclusions. A copy of each award shall be preserved by the Secretary, who shall at intervals distribute to Administrative Committee members and arbitrators copies of awards rendered since the previous distribution. Arbitrators shall study the awards and be guided by them in their deliberations, so that a continuity and line of precedents and principles will be evolved.
- (c) The provisions of Rule 40(a) and (b) shall also apply to appeal arbitrations, except that the appeal award shall be rendered within sixty days after receipt of the record or after submission of brief and argument if requested by the appeal arbitrators.

Rule 41. Each arbitration award shall apportion among interested CARRIERS all COSTS that have been paid in connection with the dispute. The expense of arbitration, as measured by the fees paid by the CARRIER(S) requesting arbitration, shall be distributed or redistributed by the award in the following manner (notwithstanding that it is an element of COST): the expenses shall be charged in equal shares to CARRIER(S) which under the award must pay amounts in excess of the amounts such CARRIERS(S) agreed to pay prior to arbitration. No CARRIER against which the award assesses amounts equal to or less than the amounts accepted and paid by such CARRIER prior to arbitration shall bear any part of the arbitration expense as defined in this rule. This rule also governs appeal arbitrations.

Rule 42. The CARRIER parties to any arbitration shall pay, as an element of the expense of arbitration, the reasonable expenses incurred by the arbitrators in connection with their hearing of the dispute. Statements of such expenses shall be submitted to the Treasurer by the arbitrators at the conclusion of each arbitration and he shall apportion such expenses among

the CARRIER parties in accordance with the apportionment made under Rule 41. This rule also governs appeal arbitrations.

- Rule 43. The Treasurer shall issue a statement of arbitration expenses to the interested CARRIERS based on the awards. It shall show the total expenses arbitrated, the percentages of them to be paid by each CARRIER, and the amounts to be paid in dollars. Amounts already paid by each CARRIER shall be shown. Remainders due from the interested CARRIERS shall be shown as “debits” and they shall be remitted to the Treasurer. Overpayments shall be shown as “credits” and the Treasurer shall disburse them to the CARRIERS due them, by check drawn on the arbitration account as soon as the debits have been collected and deposited. This rule also governs appeal arbitrations.
- Rule 44. Debits must be remitted to the Treasurer within thirty days following receipt of his statement.
- Rule 45. When arbitration or appeal arbitration has been concluded, the Treasurer shall issue checks against the arbitration account in favor of each arbitrator or appeal arbitrator in the amount of \$100 for each case plus his reasonable expenses.
- Rule 46. (a) A separate arbitration report shall be submitted annually by the Secretary to the Administrative Committee. It shall list the disputes decided, names of the arbitrators and appeal arbitrators who served, all receipts and disbursements in the arbitration account, the balance on deposit, and any other facts of significance concerning the operation of this agreement.
- (b) The Secretary shall report to the Internal Revenue Service annually the names of arbitrators and appeal arbitrators to whom fees were paid, and amounts of compensation disbursed to each.

## PART II

Rule A. The only definitions contained in Part I of this agreement that apply to this Part II are "CARRIER" in rule 1(d) and "RAILROAD" in Rule 1(1).

Rule B. The following definitions apply to this Part II only:

- (i) POSSESSING CARRIER: A CARRIER in possession of a railroad car or which has made it available to a shipper or consignee during which time an ACCIDENT occurs. A CARRIER or RAILROAD shall be considered to have possession of a railroad car when such car has been placed by another CARRIER or RAILROAD on the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery. A railroad car rejected by the receiving CARRIER or RAILROAD shall be considered as remaining in the possession of that CARRIER or RAILROAD until such car has been placed or left on the appropriate track for return to the delivering CARRIER or RAILROAD. [Amended 2-5-78]
- (ii) ACCIDENT: Any occurrence involving a railroad car which meets both of the following conditions:
  - (a) The occurrence is alleged to have caused personal injury or property damage to an employee (An EMPLOYEE is an individual who is on the direct payroll of the carrier and is performing services for that carrier, excluding individuals who are employed by non-railroad subsidiaries, contractors, or subcontractors) [Amended 8-3-88] of the POSSESSING CARRIER; and
  - (b) The occurrence is alleged to have been caused in whole or in part by a defective condition of a railroad car or its lading, including the loading or securement thereof, while that car or its lading was in the possession of the POSSESSING CARRIER.

Rule C. As respects all other CARRIERS, each POSSESSING CARRIER shall assume full responsibility, and hold harmless and indemnify all other CARRIERS, irrespective of their negligence, for loss arising from death,

injury, or property damage sustained by an employee of the POSSESSING CARRIER due to an ACCIDENT. Notwithstanding any other provision of this agreement, no party to this agreement shall be liable under this agreement for punitive or exemplary damages assessed against any other party. In any case in which punitive damages are sought, the party responsible for the defense of the case shall promptly notify every party against whom punitive damages are sought, and each party may, at its sole expense, elect to select its own counsel and to participate directly in the defense of the case. [Amended 7-15-03]

Rule D. Nothing in this Part II shall apply to an ACCIDENT if liability therefore is covered by another contract or agreement between CARRIERS or a CARRIER and a RAILROAD.

Rule E. Disputes between CARRIERS arising under this Part II are subject to the arbitration provisions of Part I.

IN WITNESS WHEREOF, and in consideration of the premises and the execution of counterparts of this agreement by other CARRIERS, the CARRIER named below hereby adopts, jointly and severally with all other CARRIERS which have executed or may execute counterparts of this agreement, all the promises and undertakings contained herein as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CARRIER

\_\_\_\_\_  
ADDRESS

By \_\_\_\_\_

\_\_\_\_\_  
TITLE