

INTRODUCTION

The *Canadian Transportation Act* (the Act) contains several provisions designed to facilitate the resolution of rate and service disputes between carriers and shippers or transit authorities. Final offer arbitration (FOA), described in Part IV of the Act, provides one means of resolving such impasses through the use of an arbitrator or a panel of three arbitrators. Unless the parties agree to a different time frame, arbitration must be completed within 60 days, or 30 days for disputes involving freight charges of less than \$750,000. Under these confidential processes, parties may choose their arbitrators and can benefit from procedural flexibility and enforcement of the arbitrator's decision as a decision of the Agency.

WHEN CAN FOA BE USED?

FOA can be used to settle rate and service disputes relating to:

- movements of goods by railway (movements of containers and trailers on flat cars are not eligible for FOA unless the containers arrive by water at a port in Canada served by only one railway company to move on by rail, or arrive by rail at such a port in Canada for further movement by water).
- rates for a railway company's services to a designated commuter rail authority or a passenger railway;
- movements of goods by water needed to maintain or develop permanent settlements for northern marine resupply purposes; or
- domestic movements of goods by air to which Part II of the Act applies.

SUBMISSIONS FOR FOA

A shipper's submission for FOA must include:

- I. the final offer of the shipper to the carrier, excluding any dollar amounts;
- II. an agreement by the shipper to abide by the arbitrator's decision;
- III. an agreement by the shipper to pay half of the arbitration costs (the carrier is responsible for the other half)
- IV. if possible, the name of the arbitrator agreed to by both parties to conduct the arbitration. If the arbitration is to be conducted by a panel of arbitrators, the name of the arbitrator chosen by the shipper and the name of the arbitrator chosen by the carrier.

The carrier must receive written notice of a shipper's intention to submit a matter to the Agency for FOA at least five days prior to the shipper doing so.

Within ten days of submitting the issue to the Agency, the shipper and the carrier make their final offers, including the proposed rates.

Within five days of receiving the final offers, the Agency must refer the matter to the arbitrator or arbitration panel. The arbitrator and parties decide how to conduct the arbitration proceedings. If the parties cannot agree, the Agency will provide the rules of procedure. The Agency can also provide administrative, technical or legal assistance if requested by the arbitrator.

Often, a submission will raise questions regarding the availability of FOA to solve the dispute. The Agency must decide on these questions and, depending on the timing, such rulings may mean that an arbitrator's decision is set aside. If the arbitrator's decision is pending, the process may continue subject to terms or conditions. A listing of issues determined by the Agency during FOA are available on the Agency's website.

CONDUCTING THE ARBITRATION

The arbitrator must consider information the carrier and the shipper provide in addition to any other information he or she may request.

Unless the parties agree otherwise, the arbitrator must also consider whether the shipper could use any other competitive means of transportation.

THE ARBITRATOR'S DECISION

The arbitrator must choose either the final offer of the shipper or the final offer of the carrier. The decision will remain in effect for one year, provided the parties did not previously agree on a lesser period.

The rates and/or conditions of the movements contained in the selected offer may be published in a public tariff or included in a confidential contract, as agreed on by the parties.

On the request of the parties within 30 days of the arbitrator's decision, or 7 days under the summary process, the arbitrator shall provide written reasons. Unless the parties agree otherwise, the arbitrator's decision is final and binding on the parties and retroactive to the date of the shipper's initial submission to the Agency. The parties must promptly pay any monies or interest owed as a result of the arbitration.

COSTS

The shipper and the carrier share the costs of FOA equally. Arbitrators may establish their own fee structures, although the Agency may, in some circumstances, fix arbitrator costs.

The parties also share the Agency's cost of providing administrative, technical and legal assistance requested by the arbitrator or arbitration panel.

CONFIDENTIALITY

If either party requests it, the Agency and the arbitrator will keep all matters related to the FOA confidential. If the arbitrator gives reasons for the decision, he or she cannot disclose any information from a confidential contract.



For More Information

The Agency's list of arbitrators and guidelines for selecting an arbitrator are available on the Agency's Web site at www.cta.gc.ca. Copies of the arbitrators' curriculum vitae are available upon request to the Agency:

Rail and Marine Complaints
and Audit Services
Rail and Marine Branch
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec K1A 0N9

General enquiries: (819)953-2236
TTY: 1-800-669-9705 or (819) 953-9705
Fax: (819) 953-5564
E-mail: foa.arbitrage@cta-otc.x400.gc.ca

This guide provides a brief overview of the FOA process. In all cases, the language of the legislation and regulations is the final authority.