

## **IMPORTANT LETTERS FROM RAILWAY BOARD**

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### **1. Award of interest by Administrators**

#### **(a) Interest on disputed claims**

*(Authority- RB L No78/W1/CT/36. dtd 31-8-1988)*

The guidelines contained in Board's letter of even number dt.25/10/79 on the above subject have been reviewed by the Board, in consultation with Legal Advisor of this Ministry, in the context of Supreme Court Judgment ACT 1987(4) SCB Executive Engineer Irrigation Galimala and Others V/s. Abbaduta Jena, decided on 22/09/87. Based on the review, the following revised guidelines are being issued, in supersession on the earlier ones.

- i) In arbitration matters, where the cause of action, arose before 19<sup>th</sup> August 1981, no interest can be awarded by an arbitrator either for the period before reference to arbitration, or during the currency of the arbitration proceedings. The arbitrator can award interest from the date of award till decree, but the rate has to be only reasonable. After the decree, it is for the court to award interest and this interest under Sub-section 34 of the C.P.C. is 6% unless the transaction is commercial.
- ii) In respect of claims arising on or after 19<sup>th</sup> August 1981, an Arbitrator can award interest for the period before the reference of the claims to arbitration, but no interest for the period of the currency of the proceedings can be awarded. In the claims against Railways, there is, however, a clause (16.2) in the general conditions of contract that no interest will be payable upon the amounts payable to the contractor under the contract. In view of this clause, therefore, the arbitrator cannot award even the interest for the period prior to the reference to the arbitration. He can, however, award interest for the period after the date of the award.
- iii) It would be seen from the forgoing that, as far as the Railway arbitrations are concerned, the position is that the arbitrator can award interest neither for the period before reference nor for the period of currency of the arbitration proceedings. If he deems it necessary he may award interest only from the date of award, till the decree of the Court.
- iv) No interest shall be payable upon the earnest money or the Security deposit amount.

### **1. Award of interest by Administrators**

#### **(b) Payment of Interest**

(Authority: Railway Board's letter No. 2003/CEI/CT/9 dated 11.7.2003)

Sub: Hon'ble High Court/Guwahati's Judgement & order dated 19.6.02 in Arbitration appeal filed by Union of India represented through N F Railway/Con/MLG-Vs-Major V.P. Najhawan Retd., Contractor on the subject of payment of interest.

In the Judgement the Hon'ble Judges on the subject of payment of interest payable to the contractor given the judgement in favour of Railways. Hon'ble Court upheld the contention of the Railways about the interest that the arbitrators do not have jurisdiction to grant interest. A fresh adjudication of the question of interest is illegal and contrary to the provision.

Although, the contractor has gone for SLP in Supreme Court against this judgement and outcome would be circulated as and when available, nevertheless the judgement can prove to be quite useful in contesting several other similar cases.

## **2. Appointment of retired Railway Officers as Arbitrators**

*(Authority No. 95/CE-I/CT/24 New Delhi, dt. 4.11.1968. Appearing as ANNEXURE-31 to Engineering Standing Order No-10)*

In connection with the above subject, Board have decided that only when the number of Arbitrators is 3 or more, one of the Arbitrators can be a retired Railway Officer. Only Retired Officers with impeccable reputation, we are clear from Vigilance angle and who have retired in SA Grade and above should be appointed as Arbitrators.

Guidelines for appointment of retired Railway Officers as Arbitrators and other conditions are enclosed as Annexure-I.

### **ANNEXURE - I**

#### **Guidelines for appointment of retired Railway Officers as Arbitrators and other conditions**

1. Railways should call for applications from retired SA Grade Officers who are willing to work as Arbitrators for empanelment.
2. A Panel of Arbitrators shall be drawn up by the concerned Zonal Railways after obtaining Vigilance clearance from Railway Board. Since in all arbitration cases having three or more members, one Member will be from Finance and since most of the arbitration cases are from Civil Engineering Department, larger panels of Finance and Civil Engineering Officers should be formed. Similar panels may be formed for Mechanical, S&T, Electrical and Stores Department Officers who have dealt with contract matters during their service tenure. The panel should be reviewed every year by G.M. in consultation with Railway Board Vigilance and names added / deleted as necessary.
3. For the retired officer, normal TA/DA would be admissible for any visits that the

arbitrator / arbitrators may undertake for site inspection etc. The Railway should provide the class of pass for which the officer was entitled before retirement. They will also be entitled to TA/DA as per their position prior to retirement. The arbitrator should also be entitled to rest house and official vehicle when visiting outstations as on duty.

4. For arbitration proceedings, Railway shall make available necessary accommodation along with furniture and telephone on the dates of hearings.
5. Normally an arbitration award must be given within 4 months from the date of first hearing. However, for claims exceeding Rs. 50 lakhs, a period upto one-year may be permitted.
6. At a time, not more than 3 arbitration cases should be given to one retired officer.
7. The arbitrator shall maintain strict secrecy in relation to the documents and information received by him regarding the case in question and shall return records, reports etc. received during the arbitration proceedings to the competent authority in the railways at the time of submission of the award.
8. GM will keep watch on the performance of the arbitrator and if the GM finds that the arbitrator does not appear to be fair, he may consider deleting the arbitrator's name from the panel for the subsequent period.
9. Once an Arbitrator is appointed by the Government Authority, the mandate of the arbitrator can be terminated and arbitrator substituted by another, as per clause 15 of the Arbitration and conciliation Ordinance, 1996.

### **3. Arbitrability of Excepted Matters**

*(Authority No. 2000/CE-I/CT/39 dt. 6/7.8.2002)*

#### ***Subject-Hon'ble Supreme Court's orders dated 01.3.2002 in SLP filed by Union of India V/s. Sarvesh Chopra, Contractor***

*A copy of the above judgement is enclosed herewith for your information and ready reference. In the judgement, the Hon'ble Judges have deliberated upon at length the issues of excepted matters and its arbitrability. Hon'ble Court, in fact, has upheld the contention of the Railway about the excepted matters that these matters should not be allowed to be arbitrated upon. The important observations made by the learned Judges are given below:*

- i) To be an excepted matter, it is not necessary that a departmental or inhouse remedy for settlement of claim must be provided by the contract. Merely for the absence of provision for inhouse settlement of the claim, the claim does not cease to be an excepted matter.*
- ii) It would be an exercise in futility to refer for adjudication by the arbitrator a claim, though not arbitrable, and thereafter, set aside the award if the Arbitrator chooses to allow such claim. The High Court was in our opinion, not right in directing the said claims to be referred to arbitration.*
- iii) We cannot subscribe to the view that interpretation of arbitration clause itself can be or should be left to be determined by arbitrator and such determination cannot be done by Court at any stage.*

*In a nutshell, it can be said that the above judgement may prove to be a landmark*

*judgement in contesting other similar cases where excepted matters have been arbitrated and award given by the Arbitrator.*

#### **4. Disposal of Arbitration Cases**

##### **a) (Authority: EDCE(G) Railway Board's letter No. 2003/CE-I/CT/5 dt. 02.7.03)**

The matter, as brought out by GMSWR/Hubli in his DO letter referred to at (i) above has been examined and it has been decided by the Board that those arbitration cases, where the dispute has arisen before bifurcation of the old zone, would be dealt with and finalized by the parent zone. This will include making the award, its payment and contesting the petitions in the Court of Law arising out of or consequent to arbitral award, if any.

This issues with the concurrence of Legal Dte. of Railway Board and approval of Board(ME).

##### **b) (Authority: Railway Board's letter No. 2003/CE-I/CT/5 Pt.I dated 28.8.2003)**

In reference to above D O letter, I appreciate your concern and I have got the matter examined.

The In-charge of the field units to which the arbitration case(s) pertains to, like Sr DEN/Dy CE(Construction) would attend the hearing with the Arbitrator appointed by the parent zone. The files of the Arbitration cases, which are maintained by the field units, will continue to be with them.

As has already been clarified, the award money would be paid by the parent Zone and the same can be debited to the new Zones. New Zones can always ask for the funds during August Review or at revised Budget stage.

I may also mention that the same policy has also been adopted in dealing with the cases pertaining to claim compensation/accident compensation and other court cases, etc. by the Commercial Dte.

Therefore, any change in the policy issued with the concurrence of Legal Directorate, is not considered necessary at this stage.