

**KANSAS GRAIN AND FEED ASSOCIATION  
ARBITRATION RULES**

*The Kansas Grain and Feed Association operates this arbitration system for its members. This arbitration system is not affiliated with the arbitration system organized and operated by the National Grain and Feed Association. Non-members of NGFA may purchase a copy of NGFA arbitration rules by contacting: NGFA, 1201 N.Y. Ave., Ste. 830, Washington, D.C. 20005. 202-289-0873.*

**The Arbitration System Description and Purpose**

Section 1. The Arbitration System of this Association shall comprise as many KGFA Arbitration Committees consisting of three members each as may be required by the nature and variety of disputes arising among the members, and an Arbitration Appeals Committee. These committees will be formed as provided in Section 4.

The administrative work in connection with Arbitration shall be handled by the President. The purpose of Arbitration in this Association is to reduce friction among its members, avoid litigation, prevent misunderstandings and adjust unsatisfactory conditions.

**Matters to be Arbitrated**

Section 2. The term dispute as used, herein, shall be deemed to cover the original complaint as filed, and also any cross complaint, counterclaim, or offset as set forth by the defendant, but in no case shall the matters submitted by the defendant be any other than those directly related to the transaction on which the original complaint is made.

**Jurisdiction**

Section 3.

(a) A KGFA Arbitration Committee may properly consider a case involving a dispute between or among any of the following:

(1) Active members or Allied members of the Kansas Grain and Feed Association (among whom Arbitration is made compulsory by the Association Bylaws);

(2) Members of the Kansas Grain and Feed Association and nonmembers, by consent of both parties or by court order. In the absence of a court order a case between a member and a nonmember may not be properly considered by the KGFA Arbitration Committee without the consent of both parties. If the contract in dispute between a member and nonmember provides for Arbitration by the Kansas Grain and Feed Association or under its Arbitration Rules, the parties to the contract shall be deemed to have consented to arbitrate under these Arbitration Rules.

(b) No KGFA Arbitration Committee shall, except by consent of both parties, assume jurisdiction over transactions between members of the same regularly organized Board of Trade or Grain Exchange when such transactions are subject to the terms of such Board of Trade or Grain Exchange.

(c) When transactions by their express provision are made subject to the terms of a regularly organized Grain Exchange, the KGFA Arbitration Committee shall render their decisions in accordance with the terms of such Board of Trade or Grain Exchange, and such terms shall be binding upon the Arbitration and Appeals Committees of the Kansas Grain and Feed Association. All other decisions shall be in accordance with the Bylaws and Trade Rules of this Kansas Grain and Feed Association, and all definitions included in the Trade Rules shall apply under these Arbitration Rules, likewise.

(d) The original complaint in connection with any disputed matter proposed for Arbitration must be filed with the President within twelve (12) months after expiration date for performance of the contract or contracts involved. For cases, between a member and non-member arbitrated pursuant to court order, the Arbitration proceeding must be commenced within 30 days of issuance of court order.

### **Formation of Committees**

#### **Section 4.**

(a) Each KGFA Arbitration Committee of three arbitrators shall be selected by the President and approved by the Chairman with respect to each case to be referred to said committee.

(b) These arbitrators shall be selected from the membership with a view to forming each committee of prominent people experienced in the type of trade involved in cases to be brought before it. To qualify as an arbitrator, a member should be commercially disinterested with respect to the particular dispute intended to be presented to him for judgement. If an individual arbitrator changes employment from one member firm to another member firm, the individual must continue to be commercially disinterested or be replaced.

(c) The Arbitration Appeals Committee shall consist of five persons who are Active members and shall be appointed by the Chairman within thirty (30) days following the close of each annual meeting to serve for the ensuing year.

(d) If an individual committee member ceases to be employed by a member firm prior to a decision, the individual committee member would be disqualified. In the event of the absence, resignation, refusal to act or disqualification of a regular member of a Kansas Grain and Feed Association committee, the Chairman of the Kansas Grain and Feed Association shall fill the vacancy with any eligible member who will consent to serve, and said appointee shall have the same power and duties as such regular member. The acts of a committee so formed shall be of the same effect as the acts of a regular committee.

### **Procedures for Instituting Cases**

#### **Section 5.**

(a) To commence a case, a complaint must be submitted to the President. This complaint should state specifically the nature of the dispute; including the defendant's name and address, applicable contract numbers, date of incident giving rise to the dispute, and the amount of damages claimed.

(b) The President then will prepare and submit to the disputants a contract for Arbitration, to be signed by a responsible officer of each firm which is party to the dispute. This contract shall provide that the disputants will agree to abide by the award of the KGFA Arbitration Committee or of the Arbitration Appeals Committee, if the original verdict is appealed by one or more of them; and to release the Association and the members of said committee(s) from all responsibility for any errors in judgement that may occur in any respect whatsoever, and from any damage or loss resulting from their acts.

(c) Upon signing said Arbitration agreement, each disputant must pay an Arbitration service fee based on the amount of the Plaintiff's claim as follows: Claim up to \$5,000 (\$200 Arbitration service fee); Claim of \$5,001 to \$25,000 (\$400 Arbitration service fee); Claim of \$50,001 to \$100,000 (\$800 Arbitration service fee); Claim of \$150,001 and up (\$1,500 Arbitration service fee). In the event a case is settled prior to the request to the plaintiff for rebuttal, parties will receive as refund of Arbitration fees, fifty percent (50%) of the previously submitted fees. For cases settled following submission of the rebuttal, fees are non-refundable.

(d) In the event of a complaint being submitted by an Active member or Allied member against another Active member or Allied member, or nonmember by consent of both parties, or by virtue of a court order, it shall be the duty of both parties to complete the contract for Arbitration within fifteen (15) days from the date the party receives the contract from the President.

(e) In the event a party against whom a complaint has been filed desires to file a cross-complaint, counterclaim, or offset, arising out of the same transaction upon which the complaint is based, he shall be permitted to do so, and same shall be passed upon by the KGFA Arbitration Committee, all with the same force and effect as though the cross-complaint was the original complaint. The cross-complaint shall be filed at the same time the answer is due. The complaint and the cross-complaint shall be heard as one case. For cases involving a string trade (a trade with subsequent purchase(s) and sale(s) of the same shipment occurring after formation of the original contract but before shipment is received by the final receiver), the time limits established in Rule 7 may be amended by the President to permit the exchange of arguments between original plaintiff and ultimate defendant.

(f) If all parties to a string trade agree, and consent to abide by the ultimate decision, the original plaintiff and ultimate defendant will be permitted to release the parties in the middle of the string from participating in the Arbitration.

### **Procedure for Preparing a Case**

#### Section 6.

(a) In preparing either side of a case for submission to a KGFA Arbitration Committee, a party will be expected to furnish:

(1) A concise and clear statement of all that is claimed. Parties to the Arbitration are responsible for clearly presenting all aspects of their case (the President and the Arbitration panel are not responsible for undertaking fact finding searches or discovery);

(2) The contract or contracts, if any, including all written evidence, letters, and telegrams, tending to establish the terms and conditions (or photostatic or verified copies thereof).

The contract is the basis of most of the cases in dispute between grain and feed firms, and special care should be exercised to establish the terms and conditions of it, in the preparation of a case of Arbitration. An offer by one party to buy or sell, and the acceptance of the offer by the other party, may constitute the contract. The confirmation of the contract may be essential in determining what the agreement was, and should always be included.

It is all-important that the contract, when there is one, should be clearly and definitely established;

(3) Shipping directions if any;

(4) Bills of lading, if any;

(5) Inspection certificates from point of shipment, if any;

(6) Inspection certificates from point of destination if any;

(7) Freight expense bills, if there is any dispute regarding freight paid;

(8) Confirmation of freight rates, when that question enters into the case;

(9) Authority for freight rate, when difference of rate is involved;

(10) Proof of market difference when there is any probability of the market difference affecting the rights of the parties to the case, either because of discounts for grade, delay in shipment, or non-fulfillment of contract. The proof of market difference might be the price bulletin of the market to which the grain in question was shipped, or intended to be shipped, of those dates on which the price is to be established; but in case it is necessary to establish such difference in a market where no price bulletin is regularly issued, affidavits by disinterested persons should be furnished.

(b) All evidence should be arranged in chronological order to present a clear history of the case.

(c) Evidence and argument must be submitted by all parties.

(d) When the original papers concerning the case cannot be supplied and copies are substituted, a statement should be made under oath that the original papers have been lost or are beyond the control of the party offering copies as evidence and that the copies, so offered, are true copies.

(e) All papers should be fastened together securely to avoid loss.

(f) Samples should not be submitted in evidence as the arbitrators will not act as inspectors or compare samples. If the grade or quality of commodities is in dispute, inspection certificates or other documentary evidence must be submitted.

### **Procedure for Handling a Case Prior to Committee**

#### Section 7.

(a) Each case shall be filed in writing with the President, and shall include all the evidence and a set of pleadings as described above.

(b) The plaintiff shall have twenty (20) days from the date he receives notification from the President to prepare and file his first argument.

(c) Upon receipt of the first papers from the plaintiff, the President shall within ten (10) days thereafter forward to the defendant a duplicate copy of all papers filed by the plaintiff.

(d) The defendant shall have twenty (20) days to forward its answer from the date it receives the plaintiff's pleadings and evidence from the President and to submit a cross bill or counterclaim.

(e) Upon receipt of such answer and of the cross pleadings, if any, of the defendant, the President shall forthwith and within five (5) days forward a copy of same to the plaintiff, who shall have ten (10) days after receipt thereof to file a rebuttal.

(f) Upon receipt of the rebuttal, the President shall forthwith and within five (5) days forward a copy to the defendant, who shall have ten (10) days from date of receipt to file a surrebuttal to the President.

(g) Upon receipt of the surrebuttal the President shall within five (5) days of receipt thereof forward a copy to the plaintiff.

(h) Where a party has failed to file Arbitration papers in accordance with the time limits specified in this Section, the delinquent party shall be deemed to be in default, except there is no obligation to file a rebuttal or surrebuttal. The President may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to both parties.

### **Procedure in Committee and in Announcing Awards**

#### Section 8.

(a) When a case is fully prepared and ready to be assigned for hearing, the President shall assign it to one or another qualified committee as he may deem advisable for the expeditious handling of the case in the Association. A member of the committee shall disclose to the President any circumstances likely to affect his impartiality, including any bias or any financial or personal interest in the result of the Arbitration. Upon receipt of any such information from a committee member, the President shall transmit such information to both parties and replace said member if either party requests such action within five (5) days from receipt of such information or after the voluntary withdrawal of such committee member. Upon assigning a case as herein provided, the President shall notify each party of the names and addresses of the chairman and members of the KGFA Arbitration Committee processing said case. Upon receipt of such notice, either party to the case may challenge the appointment of a member of the Kansas Grain and Feed Association Committee for prejudicial or other causes within five (5) days of receipt of this notice. Upon determination that such challenge is valid the President shall replace such member.

(b) The Chairman of a KGFA Arbitration Committee may choose for his committee to determine its awards, or otherwise dispose of the cases submitted to it by one or more of the methods hereinafter set out provided however that if either disputant requests an Oral hearing same must be held:

- (1) By passing the papers from one to another through the mail;
- (2) By calling a meeting of the members of a Committee;
- (3) By calling a meeting of members of the Committee to hear oral argument;

- (4) By such other means as the Chairman may deem necessary.
- (c) A decision of the members of the Arbitration Committee shall be by majority vote.
- (d) A committee cannot be called together more than once each calendar month, except by the consent of every member of the Committee.
- (e) A committee cannot act at a meeting thereof, unless all members are present.
- (f) When either party to an Arbitration requests an oral hearing, the same must be held. Such written request must be made to the President on or before the filing of the defendant's surrebuttal.
- (g) The party requesting such an Oral hearing must pay whatever amounts, in addition to the regular deposits as provided in Section 5(c), as shall be necessary to cover the additional expenses of the Committee for the hearing. The amount of such additional expenses shall be determined and fixed by the Committee. In the event the party requesting an oral hearing is a nonmember, said party shall advance the amount determined necessary to cover approximately the additional hearing expenses, including an official record of the minutes as set forth in subsection (h) and travel expenses as set forth in subsection (j). The President shall notify the requesting nonmember within ten (10) days after receipt of an oral hearing request what the approximate expenses of the hearing will be. If both parties request an oral hearing, the amount to be paid by each in advance shall not exceed one-half of the estimated amount. The amount specified by the President shall be advanced no later than fifteen (15) days before the date set for the hearing. Failure to advance expenses may be grounds for denying a request for an oral hearing or rendering the noncomplying party in default. After the Committee determines and fixes the actual amount of additional expense incurred, the nonmember shall be refunded or billed by the President for the difference between the amount advanced and actual costs.
- (h) In the event of an oral hearing, the President shall make the necessary arrangements for the taking of an official record of the minutes of the hearing. The party or parties requesting the oral hearing shall pay the cost of such record directly to the President in accordance with the normal procedure for paying the hearing costs. The President shall pay the reporting agency in accordance with their agreement. The official minutes shall be made a part of the official transcript of the case.
- (i) When a cases to be considered as in (b)(3) above, the Chairman of the Committee shall fix a time and a place for its hearing, and shall give the President fifteen (15) days notice of the date and the place so fixed, so as to enable the President to give the parties to the Arbitration ten (10) days notification of the date and the place of the hearing. In the event of a nonmember request for oral hearing, the date so fixed shall be no sooner than fifteen (15) days from the date the amount advanced for approximate expenses is received by the President. Neither party shall seek to postpone the hearing of a case longer than ten (10) days after such date has been set, unless good cause, satisfactory to the Committee, can be shown therefore. Requests for postponement must be received by the Chairman of the KGFA Arbitration Committee at least five (5) days prior to the date set for hearing.
- (j) The members of the KGFA Arbitration Committee, the President, and the Association's legal counsel shall receive the amount of their actual traveling and hotel expenses when attending meetings to consider a case or to hear oral testimony.
- (k) The KGFA Arbitration Committee shall act promptly on all cases submitted, and shall endeavor to make their report within thirty (30) days after receipt of final papers from the President. The awards of the KGFA Arbitration Committee shall be dated on the day they are received at the office of the President, and copies of said awards shall be mailed by the President to the parties to the Arbitration within five (5) days after receipt thereof. Each award shall contain a concise statement of the pertinent facts and the conclusions of the KGFA Arbitration Committee and the reasons therefore. The parties to the Arbitration shall file a notice of appeal, or comply with the terms of the KGFA Arbitration Committee's Award within fifteen (15) days from the receipt of said award.
- (l) All money received by the President for account of Arbitration shall be placed with the general funds of the Kansas Grain and Feed Association, and the expenses of said Arbitration shall be paid out of said general fund.

(m) A bulletin shall be published as frequently as is necessary to give the details, as hereinafter provided, of all cases arbitrated, awards made, and any other information relative to the subject of Arbitration which may be deemed of interested to the members of the Association. Copies of the bulletin shall be mailed to all active members of the Kansas Grain and Feed Association and to the Secretaries of all Affiliated Associations. Said bulletin shall set forth:

- (1) the names of the plaintiff and the defendant;
- (2) the award(s) of the Committee, giving the names of the plaintiff and the defendant in each case, the nature of the case and the amount involved, the award and such other information as may be of interest to members;
- (3) Notice of failures to comply with the terms of awards, giving a record of each case;
- (4) Notice of refusals to arbitrate, giving a record of each case, and any reasons offered for said refusals;
- (5) Notice of failures to answer the correspondence of the President relative to Arbitration.

### **Appeal Procedure**

#### Section 9.

(a) A decision of the KGFA Arbitration Committee shall be final unless appealed by either party. If appealed, the case shall be reviewed by the Arbitration Appeals Committee and affirmed, modified, reversed or it may be remanded for reconsideration by the KGFA Arbitration Committee. There shall be no appeal under these rules from the decision of the Arbitration Appeals Committee. The party or parties to the appeal shall comply with the terms of the Kansas Grain and Feed Association Arbitration Appeals Committee award within fifteen (15) days from the receipt of said award. Arguments on Appeal shall be confined only to the facts contained in the record of the case. Any new evidence submitted in violation of this rule may be removed from the argument upon request of the President, or if necessary the chairman of the Arbitration Appeals panel shall instruct the panel to disregard the new evidence.

(b) Any decision of the Arbitration Appeals Committee must be signed by a majority of the members thereof.

(c) The appeal shall be \$400 for a claim up to \$5,000; \$800 for a claim of \$4,001 to \$25,000; \$1,200 for a claim of \$25,001 to \$50,000; \$1,600 for a claim of \$50,001 to \$100,000; \$2,000 for a claim of \$100,001 to \$150,000; and \$3,000 for a claim of \$150,001 or more. The fee shall be deposited with the President by the appellant before the case will be considered. Said appeal fee shall be deposited at the time notice of appeal is given. If not deposited, the award of the KGFA Arbitration Committee shall be affirmed or the appeal dismissed. Any overage of the deposit above actual costs shall revert to the general treasury of the Kansas Grain and Feed Association.

(d) Notice of appeal from an award of a KGFA Arbitration Committee accompanied by a statement in duplicate of the reasons therefore shall be filed with the President within fifteen (15) days from the date of receipt of the said award. The said notice of appeal shall be accompanied with the appellant's appeal fee and his certified check for the amount of the KGFA Arbitration Committee's award in dollars and cents, if any, payable to the adverse party, to be held by the President pending the decision of the Arbitration Appeals Committee.

(e) Within ten (10) days from the receipt of a notice of appeal at his office, the President shall forward to the appellee, by registered or certified mail, a copy of the appellant's statement of reasons and the appellee shall have twenty (20) days from the date of receipt of the said statement of reasons in which to file his answer. Upon receipt of the appellee's answer, the President shall assemble a record of the case, indexed and with pages numbered consecutively, including the aforementioned statements of appeal and answer and any other papers he deems pertinent to the case. Immediately upon the completion of the numbered transcript, the President shall submit the complete file of papers to the Kansas Grain and Feed Association Arbitration Appeals Committee, the appellant, and the appellee.

At the same time the President sends copies of the transcript to the appellant and appellee, he shall inform them of the names of the members of the Arbitration Appeals Committee and giving notice that a challenge for prejudicial or other causes would be entertained for five (5) days from receipt of such notice. Upon a valid challenge being made, the President must immediately name a replacement or replacements to the Committee.

(f) Within ten (10) days of receipt of the record of the case, the appellant shall file ten (10) copies of a brief of his case with the President, each argument keyed to facts contained in the record of the case. Appellee shall file his brief, in the same form and number as the appellant's brief, within seven (7) days after date of receipt of appellant's brief from the President. Upon receipt of the appellee's brief, the President shall send a copy to the appellant, and copies of the record of the case of both briefs to the Arbitration Appeals Committee.

(g) The Arbitration Appeals Committee shall meet at the call of the chairman, at a place to be designated by him, at which meeting the Committee shall consider and decide such cases as are properly pending before the Committee; provided, however, that the chairman may submit any such cases to members of the Committee by mail, for their decision by mail as he may consider proper. On request of either disputant the Arbitration Appeals Committee shall hear oral argument, but no new evidence shall be heard in the appeal of any case.

(h) Request for oral argument may be made at any time from filing of the notice of appeal until the appellee files his answer. Except when a nonmember has requested an oral hearing, the chairman of the Arbitration Appeals Committee shall set the date for oral argument as soon as practical. In the event of a nonmember request for oral argument, the time limits in the preceding sentence shall not commence until after the requesting party has advanced the approximate expenses of the meetings as provided for in this section. Appellant shall have one hour for opening statement; appellee shall have one hour and fifteen minutes for his argument; and the appellant shall have fifteen minutes confined to rebuttal argument.

(i) The expenses incurred incident to the meeting of the Arbitration Appeals Committee shall be borne by the Association, unless the Committee meeting is held pursuant to a request for oral argument. All expenses incident to a committee meeting held to hear oral argument shall be met by the party or parties requesting oral argument. In the event a party requesting oral argument is a nonmember said disputant shall be required to advance the amount necessary to cover the approximate expenses of the meeting, including a stenographic record as set forth in subsection (j) and the travel expenses set forth in section 8(j). Within ten (10) days of receipt of a nonmember's request for oral argument the President shall notify said nonmember of the approximate expenses thereof. The amount specified shall be advanced by the requesting nonmember no later than ten (10) days after notification from the President. If both parties request oral argument, the amount paid in advance by one party shall not exceed one-half of the estimated amount. Failure to advance approximate expenses required hereunder may be grounds for dismissal or affirmance of the appeal. After the Committee determines and fixes the actual amount of additional expense incurred the nonmember advancing expenses hereunder shall be given a refund or billed by the President for the difference between the approximate amount advanced and actual costs.

(j) In the event of oral argument, the President shall make the necessary arrangements for taking of an official stenographic record of the appeal arguments. The party or parties requesting the oral argument shall be the cost of such record directly to the President in accordance with the normal procedure for paying the hearing costs. The President shall pay the reporting agency in accordance with their agreement. The stenographic record shall be made a part of the official transcript of the case.

(k) Where a party has failed to file appeals papers in accordance with the time limits specified in this section that party shall be deemed in default except that the President may for good cause shown extend the time limits specified herein for a period no longer than twenty (20) days from the end of the specified time period. Any extension so granted must be in writing, and a copy thereof sent to both parties.

### **Miscellaneous**

Section 10.

(a) Whenever any papers, documents, or pleadings are required to be filed, there should be filed with the President ten (10) copies thereof, which said copies shall be disposed of as follows: the original shall be retained by the President; one copy shall be mailed to each of the members of the KGFA Arbitration Committee; one copy shall be mailed to the adverse party; five copies shall be retained by the President, and if an appeal be taken from the award of the KGFA Arbitration Committee, said five copies shall be mailed to the members of the Arbitration Appeals Committee. This rule shall apply with equal force and effect to the petition, complaint, exhibits, answers, and cross complaints, and any and all other papers that either party desires to or may be required to file.

(b) In computing time, the first day shall be excluded and the last day included. If, however, the last day falls on a Saturday, Sunday, or a Kansas Grain and Feed Association legal holiday, then the following business day shall be considered the last day. The final date for filing required documents or papers in any proceedings under these rules shall be midnight of the stated final day.

(c) Registered, certified or express receipts shall be used to determine the timeliness of any filing in accordance with the several periods of time specified in Sections 7, 8 and 9 of these Arbitration Rules. As used throughout these Rules, the term "filing" shall mean the time at which the document is mailed, first class mail, postage prepaid. All time limits placed on the President shall begin on the date the President receives the document or request which triggers his obligation.