



Canadian  
Transportation  
Agency

Office  
des transports  
du Canada

# Freight Rail Services and Rates: A Guide

Canadian Transportation Agency



Canada 

# Table of Contents

<b>Introduction .....</b>	<b>3</b>
<b>Part 1: Your right to freight rail service .....</b>	<b>4</b>
A) The railway must give you an adequate and suitable level of service.....	4
B) You must pay the rate and possibly other charges .....	6
C) You can choose between a contract and a tariff.....	7
D) You may have a right to interswitching .....	10
<b>Part 2: Ways of resolving Disputes .....</b>	<b>12</b>
A) Informal .....	12
B) Formal.....	13
C) Investigations.....	19

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# Introduction

This is a guide for freight shippers that explains their right to railway service in Canada. If you are a shipper with freight you want to move by rail, and you have access to a railway line, then you have this right. Any [federal railway company](#) ("railway") using the line must take your freight when you pay them the rate that applies. In addition:

- the railway must give you adequate and suitable service;
- you may sign a confidential contract ("contract") with the railway to get your own service terms and rates, or you can use the general terms and rates the railway offers all shippers ("public tariff"); and
- you may be able to have the railway take your freight part of the way between origin and destination at a regulated rate, then move it ("interswitch" it) to a competing railway with which you've made arrangements for the rest of the haul.

Part 1 of this guide explains your rights (and responsibilities) in detail. Part 2 sets out your options if you believe the railway is not respecting your rights. Specifically, it explains how we at the Canadian Transportation Agency (CTA) can help resolve your dispute using:

- quick, informal methods to help you and the railway work things out; or
- formal processes, where CTA or external decision-makers hear and resolve the dispute.

In addition, we have the power to initiate investigations of possible freight rail service issues without a formal complaint, and may do so if we have reason to believe serious or widespread problems exist.

## A note on wording

This guide uses the word "freight" to describe all kinds of goods and items moving by rail. This could include, for example, empty cars. In addition, the guide often calls public tariffs simply "tariffs".

# Part 1: Your right to freight rail service

## A) The railway must give you an adequate and suitable level of service

In Canada, the law says that federal railway companies must accept your business if you offer it to them and pay the applicable rate. If you have freight you want to move by rail and can get it to an appropriate railway loading point, the railway must:

- promptly pick up, carry, and deliver your freight;
- handle your freight with care; and
- make sure it has the right cars and equipment to move your freight or transfer it to other railways as needed.

In addition, the railway must have reasonable facilities for picking up, carrying, delivering, and transferring your freight. It must give you adequate and suitable service in each of these areas.

In return for the railway's service, you must:

- pay the railway its publicly advertised rate, or a rate you both agree on in a contract; and
- do your part to make it possible for the railway to get to your siding, facility, or other agreed loading site. The railway is usually not responsible for failing to give you service if it cannot access your facility safely, or at all.

### Did you know?

The railways' obligation to take all freight when asked is called the Common Carrier Obligation. It has been in place for well over a century and is a defining principle of Canadian freight rail service.

## Disputes about current or recent service

You can ask us for help if you believe the railway is not meeting its level of service obligations to you. This includes situations where:

- you are not receiving service (the railway is refusing your business); or
- you are receiving service, but you don't think it is adequate or suitable.

In addition, people other than shippers have a right to complain if they think the railway is not meeting its service obligations. For example, other businesses may feel affected by perceived service shortcomings, or someone could be concerned and lodge a complaint on behalf of the community.

See [Part 2](#) of this guide for the informal and formal ways you can resolve disputes.

### When is rail service less than adequate and suitable?

Adequate and suitable service means the highest level of service that can reasonably be provided in the circumstances. The CTA weighs various factors to decide whether service meets this threshold. These factors include your service needs and any operational difficulties the railway may be having, especially if these are beyond its control.

That said, here are some situations which may be viewed as less than adequate and suitable:

- the railway arrives at your facility very late or not at all;
- the railway brings too many cars for your freight, or too few;
- the railway brings the wrong kind of car, or dirty or broken cars;
- the railway refuses your request to use cars that you own to move your freight.

These are only a few examples. There may be other situations that would be considered a failure to provide adequate and suitable service.

## B) You must pay the rate and possibly other charges

The railway must respect your right to service, if you pay for it. Specifically:

- you must pay the rate that applies to your freight; and
- you may need to pay charges above and beyond the rate, depending on your situation.

While the rate you pay is for the haul itself, charges cover other costs – for example, any add-on services you need. These are also called incidental, optional or ancillary services. They include things like storage and asset use (sometimes called “demurrage”). Add-on and other charges are part of the overall terms and conditions a railway can put in place for its services.

### **Are you shipping crude oil?**

If you are shipping crude oil, you must pay an extra amount per tonne, called a levy. It goes into a special fund that can be used to pay for damages caused by crude oil accidents, if the railway’s insurance does not cover them.

The crude oil levy is different from rates and charges, because the railway does not keep the money involved. The railway only collects the levy from you, then passes it on to the government to put in the fund.

You cannot bring us a dispute over the levy, which is handled by Transport Canada (TC). More information is available on [TC’s webpage on the fund for railway accidents](#).

The next section of the guide explains how to get a rate and terms and conditions for your freight.

## C) You can choose between a contract and a tariff

Sections A and B above talk about your right to service and responsibility for paying the rate. The specific service terms and rate you get are things that you and the railway can work out in a contract. Alternatively, you can use the terms and rate set out in the railway's tariffs. These are public documents listing the standard rate, charges, and terms for different railway services.

This section discusses contracts, tariffs, and related disputes. It also covers situations where you need a contract or tariff with more than one railway (joint contracts/tariffs).

### i. Contracts

Under this option, you negotiate directly with the railway. If you and the railway reach an agreement, you can sign a confidential contract or other written agreement. This could cover:

- the rate you will be paying, including whether you will get a reduced rate or rebate compared to the tariff rate;
- service terms (such as how often the railway will come for your freight and how many cars it will bring each time); and/or
- other charges or conditions, if any. These could include, for example, fees for any add-on services, or the penalty to be paid if you or the railway fail to uphold your part of the agreement. These are called "reciprocal financial penalties".

### Contract disputes

You can ask us for help if you and the railway are negotiating a contract but cannot agree on the rate, service terms, or other charges or conditions. This includes the amount of any reciprocal financial penalties. Part 2 of this guide explains both informal and formal ways of resolving your dispute.

If you and the railway already have a contract in place, that is a different situation. You cannot bring us a dispute about issues arising in your contract unless the railway agrees. Even then, the CTA could only ensure that the terms of the contract are applied. Our decision-makers could not order different terms.

## ii. Tariffs

Railways have different tariffs for different services. There is usually one for moving general freight, one for moving grain, one for moving goods in containers (intermodal), and so on. Each tariff describes the service being offered, the rate, and any additional charges, terms, or conditions.

Railways must post their tariffs on their websites. Any shipper can use these public tariffs, knowing the terms and rates they set are standard (the same for all shippers using that tariff).

If you ask to ship your freight using a tariff, the railway must:

- give you a tariff for moving your freight; and
- charge you only the rate shown in the tariff, and not any other rate.

Further, if the railway offers other charges or terms in the tariff and you believe these are unreasonable, you may make a complaint (see "Tariff disputes", below).

### **Do you have your own cars?**

If you provide cars the railway can use to move your freight, the railway must compensate you in some reasonable way, if you ask it to. Railways often do this by reducing the rate. Therefore, the tariff for moving a particular product may list a second, lower rate for cases where the shipper is supplying the cars. Some railways may even have a separate tariff for this situation.

Railways may not increase a rate in a tariff without giving 30 days' notice. They must publish the notice on their websites.

All the above rules on tariffs may also apply if the railway will be moving your freight by water using vessels it owns or operates.



## Tariff disputes

You can ask us for help if:

- you requested an appropriate tariff for your freight and the railway does not give you one;
- the railway charges you a different rate than the one listed in the tariff;
- you believe the rate in the tariff is not reasonable for your particular freight;
- you believe the tariff includes unreasonable terms or charges (this means charges above and beyond the rate);
- the railway has raised a rate in its tariffs without giving 30 days' notice; or
- you have cars the railway could use, but it refuses to use them or you think the compensation being offered is not reasonable.

We may be able to help you and the railway resolve your dispute informally, or you can use one of our formal processes. [Part 2](#) of this guide explains both options, including which formal processes apply to different tariff complaints.

### iii. Joint contracts and tariffs (Joint rates)

Sometimes, you may need more than one railway to get your freight to its destination. You may be able to move your freight under a joint tariff or contract if:

- your freight will be moving over a continuous route in Canada; and
- two or more railway companies operate on that route or part of it.

The railways must offer you a joint tariff, or enter into a contract with each other to move your freight, if you ask them to. The joint tariff or contract would apply to the part of the continuous route those railways share.

The joint tariff or contract should set out the service terms or rate, including how the railways will divide your payment to them. That part is up to the railways to work out.

The railways also choose the tariff, if you ask for a tariff. They need to agree on what tariff to use.

### **More about the continuous route**

There may be times when a haul is interrupted. This includes stops required to split up freight and repackage it, or divert some cars that are headed for a different destination, or otherwise break up the bulk of the movement. A route/movement can be continuous even with these kinds of stops.

### **Disputes about joint contracts and tariffs**

You can ask us for help if:

- you ask for a joint tariff or contract and one or more of the railways involved refuses, or they cannot agree among themselves;
- one or more of the railways tries to prevent you from shipping on the continuous route; or
- you and the railways involved in joint discussions disagree about whether a route is continuous.

We may be able to help you and the railway resolve your dispute informally, or you can use one of our formal processes. The process you need depends on your specific dispute. The guide explains this in Part 2.

## **D) You may have a right to interswitching**

Your right to freight rail service may include a right to interswitching (the transfer of freight between two railways). The purpose of interswitching is to make sure that shippers have fair and reasonable access to service from more than one railway, which can increase competition in the system.

There are two types of regulated interswitching:

- interswitching at a regulated rate for shippers whose traffic origin or destination is within 30 kilometres of an interchange (the point where two railways meet) or is found by the CTA to be "reasonably close" to an interchange, and
- long-haul interswitching (LHI), which is not limited to 30 kilometres, although other conditions apply.

This guide does not cover interswitching in any further detail. We have separate resources that explain it and how to make a complaint about it. For 30-kilometre interswitching, see our [Disputes About Interswitching](#) page. For LHI, see [Long-Haul Interswitching: A Guide](#).

## Part 2: Ways of resolving Disputes

If you have a dispute about a rail service issue described in this guide, the CTA can help you and the railway settle it yourselves through informal processes. If that isn't successful, or if you are not interested in an informal approach, we can resolve your dispute through processes that are formal and binding. We discuss these options below.

### A) Informal

You can ask us to help resolve any issue covered in Part 1 of this guide informally, using facilitation or mediation. This is the fastest way to settle a dispute, and is free of charge. We have freight rail experts who are also trained facilitators and mediators and are ready to help.

- In [facilitation](#), our experts work with you and the railway by phone or email to help you reach an agreement. The railway doesn't need to agree for you to request facilitation, but it has no obligation to participate.
- [Mediation](#) is similar to facilitation, but more structured. It usually involves in-person or videoconference meetings that bring you, the railway, and the mediator together. The railway doesn't need to agree for you to request mediation, but as in facilitation, it has no obligation to participate.

If you have a dispute, we recommend you try one of these informal services.

Negotiating with the help of a facilitator or mediator allows you and the railway to explore a range of solutions to help you find one you are both satisfied with.

We resolve many disputes informally, but if that doesn't work in your case, you can still use a formal option. If you do that, the railway is not allowed to reveal things you said in the informal process (and you are not allowed to reveal things the railway said). This includes any offers you made or the railway made.

## B) Formal

If an informal process does not work, or you prefer a formal approach, you can ask us in writing to have someone with decision-making powers resolve your dispute. There are two types of formal processes: arbitration and adjudication. They are similar, but there are important differences:

- Arbitration is often used in cases where you and the railway cannot agree on important issues like service terms or rates. It sets out the service terms or rate that the railway must give for a fixed period of time **going forward**. This should reduce the chance of disputes during that period.
- By contrast, adjudication **looks back** at some past or ongoing situation to determine whether the railway failed or is failing to meet its obligations to you. If adjudication finds this to be the case, it identifies a remedy. This could mean a way to correct the situation on an ongoing basis or so that it doesn't happen again in the future. A remedy can also be compensation for expenses you incurred because of the service failure.

In addition, the decision-makers and some parts of the processes are usually different:

- In arbitration, the decision-maker (Arbitrator) can be a CTA Member or employee, or an external expert. The process is generally faster than adjudication, and the decision is usually confidential. This means we do not post it on our website or release it to the media or others who might ask to see it.
- In adjudication, the decision-maker (Adjudicator) is one or more CTA [Members](#), who are appointed by the Governor-in-Council – essentially, Cabinet – and have powers similar to judges. Their decision is usually public (posted on our website). Parts of it might be kept confidential if you or the railway requested it and could show how posting the entire decision would be harmful. The Adjudicator would have to agree.

We explain more about using arbitration and adjudication for particular rail shipper issues below.

## i. Arbitration

There are two kinds of arbitration most relevant to the rail disputes discussed in this guide. One is Service Level Arbitration (SLA), which is used to resolve certain disputes about service terms. The other is Final Offer Arbitration (FOA), which is used for rate disputes and some other issues.

In both SLA and FOA, an Arbitrator hears both sides of the dispute (yours and the railway's) and makes a binding decision. You and the railway usually appear before the Arbitrator (or send representatives) to make your arguments. You must both follow the [rules for SLA](#) and the [rules for FOA](#), which set out steps and timelines. More information about the steps and timelines is also shown below.

### **Arbitration is not automatic**

We will look carefully at your application to make sure your particular dispute is eligible for arbitration according to the law. For example, the law says you can't apply for SLA for a matter that is covered by a confidential contract. If your dispute is not eligible, we will explain why, and can also tell you about other options you may have for resolving your dispute.

### **Service Level Arbitration (SLA)**

If you have tried to negotiate a contract for terms and conditions of service (called a Level of Service contract), but you and the railway cannot agree, you can apply for SLA. You do not need the railway's agreement to apply.

If your case is eligible, an Arbitrator – typically from the CTA – will be assigned to it. After considering the proposals, evidence, and arguments that you and the railway each submit, the Arbitrator will decide what service terms should be in your contract. They will set each term that is part of the dispute, which could include, for example:

- terms for loading/unloading, receiving, carrying, or delivering your freight;
- terms and charges for add-on services;

- the amount to be paid in reciprocal financial penalties (a penalty the railway will pay you if it doesn't uphold the service terms, or that you will pay the railway if you don't uphold the terms); and
- performance standards.

Your Arbitrator will set the terms as they find appropriate. This could result in a mix of terms you proposed and terms the railways proposed, or the Arbitrator could set terms differently than either of you proposed.

If the terms include an amount for reciprocal financial penalties, the Arbitrator will choose an amount that is balanced. It will be an amount that encourages the efficient movement of your freight as well as railway system performance.

SLA takes 45 to 65 days from the date you apply for it to the date of a decision, or longer if you and the railway both agree to a later decision date. The decision sets the service terms for one year unless you and the railway agree on a different period. Typically, we provide the CTA Arbitrator free of charge, but require you and the railway to share any venue and/or travel costs.

## **Final Offer Arbitration**

If you have tried to negotiate with the railway for rates or conditions for moving your freight, but you and the railway cannot agree, you may be eligible for Final Offer Arbitration (FOA). There are some exceptions for intermodal freight. In addition, if your dispute involves rates or conditions in a contract you have in place, you can only apply for FOA if the railway agrees. Otherwise, you do not need the railway's agreement to apply.

### **More about FOA and intermodal freight**

You can only apply for FOA for intermodal freight if:

- the containers arrive by water at a Canadian port served by only one railway, for further movement by rail; or
- the containers arrive by rail at a Canadian port served by only one railway, for further movement by water.

If your case is eligible, an external Arbitrator will hear your case. You and the railway would choose one from our [list of Arbitrators](#), or if you cannot agree, the CTA chooses for you.

You and the railway may also agree to have three Arbitrators: you each choose one, then those two choose the third. If they cannot agree, the CTA chooses.

FOA has these key features:

- you make your best offer for the rate or conditions, and the railway makes its best offer. The Arbitrator(s) will choose one or the other. If they choose the railway's offer, you must ship your freight on the railway's terms. If they choose your offer, the railway must ship your freight on your terms; and
- you and the railway can agree beforehand (when you apply) as to how long the rate or conditions that the Arbitrator chooses will last. If you cannot agree, then you as the shipper may choose any length of time up to two years. Again, you must do this at the time you apply. You cannot wait until you hear which offer gets chosen.

The Arbitrator(s) will look at all the information you and the railway provide before deciding between your offers. This usually includes looking at whether you had a good, competitive option other than the railway for shipping your freight. Only you, the railway, and the Arbitrator will know how your case was decided.

At any time before the final decision, you and the railway could agree to put the arbitration on hold, usually for up to 30 days, and try the more informal mediation process. If mediation is successful, you and the railway can withdraw your dispute from the FOA process.

FOA takes up to 60 days from the time you send us a completed application. However, if your dispute is over freight charges of less than \$2 million, a faster and simpler version, called Summary FOA, will be used unless you ask us not to. Summary FOA, which can be done in 30 days, is also a less expensive option for smaller shippers or shippers with fairly simple disputes under the \$2 million threshold.



You and the railway must share all the costs of FOA or Summary FOA equally, including the cost of the Arbitrator(s).

### **Applying together with other shippers**

If one or more other shippers using the same railway as you have the same rate or conditions complaint that you do, you can apply for FOA together. You and the other shippers would have to agree on one best offer that you would put forward together. However, you can only make this joint application if you and the other shippers tried to resolve the issue with the railway first.

The FOA timelines are longer for joint cases – up to 120 days, or up to 90 days for Summary FOA.

The above descriptions are meant to give you a general understanding of the two types of arbitration often used for the kind of complaints discussed in this guide. There is other arbitration, which is part of the CTA's broad power to arbitrate (or mediate) many different rail disputes. Even if the law does not clearly say that you can bring us a dispute, the CTA may be able to arbitrate or mediate it, if you ask. The railway would have to agree.

For broad information about arbitration, visit our [Arbitration](#) page. For more information about SLA and FOA, including eligible issues and how to apply, visit our [Rail Level of Service](#) and [Final Offer Arbitration](#) pages. For more on how the CTA chooses FOA arbitrators when needed, see our guide on [Selecting an Arbitrator](#).

### **Decisions are final**

In all kinds of arbitration, the decision your Arbitrator makes is final. This means you can't ask the Federal Court of Appeal to change the decision because you disagree with it.

## ii. Adjudication

If you believe a railway is not meeting its obligations to you or you have a dispute as described in Part 1 of this guide, you can use adjudication to ask for a remedy.

One or more CTA Members will be your Adjudicator. They will hear both sides of the dispute (yours and the railway's) and make a decision that is binding on you both. There are [rules of adjudication](#) that everyone involved must follow, which set out the steps and timelines.

For example, you and the railway will usually give the Adjudicator, and each other, your evidence and arguments in writing. As needed, the Adjudicator may also hold an oral hearing where you and the railway present your evidence and arguments in person or by videoconference.

### Factors to consider

The law may require your Adjudicator to consider certain factors before deciding your case. The Adjudicator may also consider other factors they think are relevant. Different cases involve different factors. For example:

- for cases about adequate and suitable service, the law sets out factors the Adjudicator must consider. These include your service needs, the railway's operational limitations, and whether you made any commitments to the railway (such as a volume commitment); and
- in cases about whether a tariff is reasonable, the Adjudicator will look at factors such as wider industry practices for setting tariffs.

If the Adjudicator finds that the railway failed to meet its obligations to you, they may order a remedy. This will depend on your specific complaint. Here are examples related to some of the complaints we discuss in this guide:

- **Service:** the Adjudicator could order the railway to give you better service. This could include, for instance, picking up your freight more often, handling it a

certain way, and using more or more appropriate cars. The Adjudicator could set the maximum charges for this service;

- **Tariff Terms and Charges:** the Adjudicator could replace unreasonable terms or charges (above and beyond the rate) in a public tariff with ones that are reasonable;
- **Joint Tariffs:** the Adjudicator could order the railways to agree to a joint tariff and to work out how they will divide the rate you pay them. Or, if needed, the Adjudicator could determine the route, the rate, how the railways will divide the rate, and the date when the tariff comes into effect. (You could get a refund that starts from the date of your application if the new rate is lower than the one you were paying); and/or
- **Other:** the Adjudicator could order the railway to take other steps to resolve your complaint or meet its legal obligations. The steps would depend on your particular case, but could include getting certain equipment, or building or repairing a siding or other infrastructure, needed to move your freight.

Adjudication is free. If you request it, we will identify the timelines that apply to your case. The law lays out different timelines for different kinds of cases, and may allow for extensions or other adjustments. Some cases can take longer than others, depending on how complex they are.

The above descriptions are meant to give you a general understanding of freight rail adjudications. For more information about how most adjudications work, or to apply, visit our [adjudication](#) page.

## C) Investigations

In addition to offering formal and informal services for resolving disputes, the CTA has the power to investigate whether railways are meeting their service obligations. This "own-motion" power is well-suited for suspected widespread or systemic service failures. Examples include situations affecting many shippers (or others), or affecting a regional or the national economy.

Key points about the CTA's own-motion investigation power include:

- we don't have to wait for someone to make a formal complaint to start an investigation;

- the Minister of Transport must agree that the situation should be investigated; and
- if our investigation finds that a railway is not meeting its obligations, we can order the same remedies that we can order when resolving service disputes. For example, we could order the railway to build or repair infrastructure, or get new equipment, to solve the service problem.

Investigations take 90 days and are led by a panel of CTA Members. There are no rules setting out the steps. Instead, the Members will set out the process on a case-by-case basis, to make sure each investigation runs as efficiently and effectively as possible. That said, the Members will always collect all the facts before making any finding. They will always hear evidence from shippers, the railway involved, and others as relevant.

You cannot apply for an investigation the way you can apply for arbitration or adjudication. That said, we monitor the rail system for potential issues. One way we do this is hearing from shippers about their experiences. If we hear from many shippers about what they believe are serious or widespread service failures, that is one factor we would consider.

If you have read this guide, but still have questions about your rights as a shipper or how we resolve disputes, we can help!

Call our Rail Help Line at [1-877-850-7148](tel:1-877-850-7148).

## **Other useful guides**

This guide has covered the disputes a shipper might have with a railway about service and rates. We also have guides and information about other rail disputes. Visit our [Rail Information](#) page for the complete list.