

## **2.7 The Hearing**

### **2.7.1 Introduction**

Multiple disputes may be heard at the same hearing, depending on the estimated time for presentations, questions and discussion. However, experience has shown that usually no more than two disputes should be heard in one day and that additional disputes should not be heard before the reports on the first disputes are complete and submitted.

There must be adequate time at the hearing to ensure that each party has the opportunity to be fully heard and that the DRB is satisfied that it understands each party's position and supporting arguments and the facts surrounding the dispute. The DRB must be satisfied that all pertinent information has been presented and understood. The parties must feel that they have been given ample opportunity to present their positions.

The DRB hearing is not a judicial process: oaths are not administered, legal rules of evidence are not observed, and cross-examination is not permitted. The format of the hearing is established by the DRB's operating procedures, and will allow each party to present all relevant material, generally without interruption.

Typically, the claimant makes its presentation first, followed by the other party. Rebuttals are then heard, followed by questions from the Board members and further rebuttals by the parties. Each party must be given ample opportunity to present its case and to rebut information presented by the other party. Direct questioning of one party by the other party is not permitted.

Hearing presentations may include a summary of position statements, discussion and explanation of documentary evidence, and presentation of visual aids and demonstrative evidence.

Information, such as written consultant reports, must be provided sufficiently in advance to enable the Board members a thorough review and the other party an opportunity to review and respond or prepare a rebuttal. Surprise information at the hearing is contrary to the open, cooperative attitude sought in the DRB process. Although surprise information is strongly discouraged, if additional information has been developed after submittal of the position papers, and the DRB decides to permit this information to be introduced at the hearing, the other party will be given ample time to consider and respond to it. This may necessitate the hearing being resumed at a later date, with the consequent delay and added cost.

Typically, each Board member takes individual notes during the hearing; the services of a court reporter are not required. However, if one of the parties insists upon such service, and is willing to bear the costs, the DRB may allow it, with the proviso that both parties and all Board members simultaneously receive copies of the transcript. Audio or video recording is prohibited, as it is likely to inhibit open and candid discussion.

During the hearing, the DRB may request further information, such as additional correspondence, daily field reports, compilations of agreed data, material delivery receipts, etc. The request may necessitate an additional hearing to consider and understand the new material.

### **2.7.2 Conduct**

DRB hearings must be conducted in a manner that encourages openness, candor, and the thorough disclosure of all pertinent information bearing on the dispute. DRB operating procedures are formulated, and modified as appropriate, to accomplish this objective while ensuring that the hearing

will proceed in an orderly, respectful and efficient manner. Board members may ask questions whenever necessary to uncover the facts and ensure that they fully understand the parties' positions. They may question the parties during their presentations on the facts of the case, and solicit their interpretation of the contract documents. The parties should not infer or otherwise construe that the DRB is favoring one side or the other by the nature of these questions.

The DRB decides all procedural issues, including recesses, adjournments, and continuation of hearings.

### **2.7.3 Conclusion**

The hearing will not be closed until the Board members are satisfied that both parties have nothing more of substance to add, and the DRB believes that it has a full understanding of the dispute.

At the conclusion of the hearing, if the DRB believes that additional documentation or other information is required for a full understanding of the issues, it may request that such information be submitted, and the hearing left open pending receipt of the additional materials. The other party and the DRB should receive the additional documentation at the same time. It is seldom necessary to reconvene the hearing; however, this may be done depending on the nature of the additional materials received and the DRB's perception of the need for additional discussion by the parties.

Contract specifications often include a time period within which the DRB is expected to submit its written report containing recommendations and supporting rationale. Where no time period is specified, or the specified time is insufficient based on the Board members' availability or the complexity of the dispute, the DRB should indicate immediately following the hearing when the parties may expect the written report.

When the hearing is complete, and all necessary information and presentations have been received by the DRB, the hearing is closed.

Sometimes in difficult cases, while preparing the report after the hearing is closed, the DRB realizes that additional documents or information are needed. The Chair will simultaneously request such information from the parties. Replies to the DRB are copied to the other party.