



Financial Services Employment Arbitration Q&A

Does My Case Qualify For Simplified Arbitration?

Occasionally, relatively small employment disputes arise regarding contractual compensation that are difficult to litigate cost effectively. In these cases, the amount at issue would be less than the fees and costs of taking the case through a full-blown evidentiary hearing.

For disputes where the amount in dispute involves \$50,000 or less, FINRA offers “simplified arbitration” under Rule 13800. Simplified arbitration cases are also called “paper” or “small claims” cases. This is available for cases filed on or after April 16, 2007.

The Amount in Dispute

The amount in dispute must be \$50,000 or less, exclusive of interest and expenses. All provisions of the Code apply to these arbitrations, with the following exceptions.

Single Arbitrator

Unless the parties agree otherwise in writing, a single arbitrator will decide the case. The arbitrator will be appointed from the chairperson roster in accordance with the Neutral List Selection System.

No Hearings – Cases Decided on the Papers

No hearings will be held – including pre-hearing conferences – unless requested by the Claimant. If no hearings are held, the arbitrator will render an award based on the pleadings and other materials submitted by the parties. If a hearing is held, the regular provisions of the Code relating to prehearings and hearings, including fee provisions, will apply.

Limited Discovery

The parties may request documents and other information from each other, but all discovery requests must be served on all other parties, and filed with the Director, within 30 days from the due date for the answer. All responses must be served and filed with the Director within 10 days of receipt. The arbitrator will resolve any discovery disputes.

Increases in Amount in Dispute

If any party increases the amount in dispute to more than \$50,000, the regular provisions of the Code will apply. If an arbitrator has already been selected, he or she will remain on the Panel. If a three-arbitrator panel is required or requested under Rule 13401, the remaining arbitrators will be appointed in accordance with Rule 13406(b). If no arbitrator has been appointed, the entire panel will be appointed in accordance with the Neutral List Selection System. FINRA will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

Analysis

Obviously, this presents a cost-effective way to resolve relatively small disputes. The trick, however, is for both parties to agree that the amount in dispute is \$50,000 or less. But employment cases typically involve multiple claims, with some often involving more subjective damages theories, such as emotional distress. In those cases, simplified arbitration will be elusive. The Claimant will typically be unwilling to stipulate that the amount in controversy will remain under the threshold for the duration of the litigation.

Nonetheless, this procedure is well suited for contractual compensation issues where both parties desire quick resolution on the papers, and the amount in controversy is more readily ascertainable.

By: *Eric M. Steinert*

Eric M. Steinert is located in Seyfarth Shaw's San Francisco office. If you would like further information please contact the Seyfarth attorney with whom you work or Eric Steinert at esteinert@seyfarth.com.

www.seyfarth.com

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