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Office of Proceedings
December 6, 2019
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 757

**POLICY STATEMENT ON DEMURRAGE AND ACCESSORIAL RULES AND
CHARGES**

REPLY COMMENTS ON BEHALF OF CN

The U.S. rail operating subsidiaries of Canadian National Railway Company (collectively herein “CN”) respectfully submit these reply comments on the proposed policy statement that the Board served on October 7, 2019 in the above-captioned proceeding. CN files these comments to address the Opening comments of certain parties asking the Board to amend its proposed policy statement to declare that it would be unlawful for railroads to not grant 24 or even 48 hours of “free time” to all customers, including for private cars. CN opposes these comments, and the Board was right not to make any such declarations in the proposed policy statement.¹

As CN explained at the Ex Parte 754 hearing and in post-hearing comments, it does not issue credits for the storage of private cars on its network. *See* Supplemental Comments on Behalf of CN, Ex Parte 754, at 17 (filed June 6, 2019). But “no storage time” for private cars at CN does not in fact mean zero time; rather, it means no extra free time will be provided if a customer does not order cars to be delivered in the first available service window. As CN has explained, 80% of its

¹ The factual information contained herein is verified in the attached verification by Kim Duggan.

customers paid no demurrage at all in the five-week sample period we examined from the Week of February 24–March 24, 2019; it is thus obviously untrue to say that it is impossible for a customer with no free time for private cars to avoid demurrage. *Id.* at 18.

While CN provides no additional storage time for private cars after a customer fails to order in the car, it does not mean that a customer immediately incurs demurrage upon constructive placement. It means that a customer is not given an extra day to order a car in for delivery after constructive placement. *See id.* at 18. No demurrage is charged if a customer who is notified that a private car is ready for delivery orders that car in for delivery on the first service available under its service plan. Moreover, CN's eBusiness tools help customers avoid demurrage by providing detailed tracking that allows customers to know in advance when cars arrive and will be available for loading or unloading. This visibility allows customers to order cars in for delivery while they are still en route, before the car is actually constructively placed. *See id.*

To assure transparency about when private car demurrage begins to accrue, CN recently revised its tariff items for asset use of loaded and empty private cars to explain that no additional free time will be given if a customer does not order a private car for delivery between the time it is constructively placed and the customer's next scheduled service. *See* Item 9200, Asset Use for Railcars Not Containing Dangerous Goods/Hazardous Materials, CN 9000 AC (8) (effective Sept. 1, 2019), at 17 ("Free time is provided between the time the customer is notified of

Constructive Placement (CP) and the customer's next scheduled switch service. No additional free time is provided."); Item 9250, Asset Use for Railcars Containing Dangerous Goods/Hazardous Materials (same); Item 9300, Asset Use for Empty Railcars (same).²

For all of these reasons, CN's customers using private cars have the tools they need to manage their supply chains without incurring demurrage charges, and most of them do. The Board was right to reject calls for a one-size-fits-all approach in its proposed policy statement that would appear to prescribe minimum amounts of free time for private cars. The record provides no reason for the Board to change course now. Suggestions that any particular demurrage practice of a particular railroad is unreasonable are best addressed on complaint on a case-by-case basis, as Congress intended.

Respectfully submitted,

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Dated: December 6, 2019

² As CN explained in Ex Parte 754, CN does offer credits for service failures so that a customer does not incur demurrage when CN is at fault. CN Supplemental Comments, Ex Parte 754, Courtoreille V.S. at 13.

VERIFICATION

I, Kim Duggan, declare under penalty of perjury that the factual statements in the foregoing Reply Comments of CN are true as stated to the best of my knowledge, information and belief.

Kim Duggan

Kim Duggan
Director Sr Merchandise Supply Chain, Network
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Executed on December 6, 2019