

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
February 17, 2022
Part of
Public Record

Docket No.767

FIRST-MILE/LAST-MILE SERVICE

Reply Comments of the Private Railcar Food and Beverage Association

The Private Railcar Food and Beverage Association (“PRFBA”) respectfully submits its reply comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31 and September 21, 2021, orders in the above-captioned proceeding in support of first-mile/last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

As expected, the Class I railroads strongly oppose any FMLM data reporting to the STB. The Association of American Railroads (“AAR”) and several Class I railroads individually filed comments arguing against the need for this additional data reporting. Not surprisingly, the railroads’ customers strongly support FMLM data reporting especially because of the ongoing service issues on the U.S. rail network after the widespread adoption of Precision Scheduled Railroading and the pandemic’s massive impact on the world’s supply chains.

AAR made several points against FMLM data reporting. First, AAR notes that there are numerous variables that can impact FMLM. Second, it argues that stakeholders would benefit from a better understanding of the intended purposes for any information collected by the Board. Third, it notes that any information collection must account for the benefits and costs it would impose on stakeholders and the Board itself. Fourth, it notes that the Board must account

appropriately for competitive concerns that could arise from the collection of service-related information.

The individual railroads basically followed similar formats in arguing that they already provide their customers extensive FMLM data. Each individual railroad provided an in-depth description of these data programs. In other words, these railroads believe there is no need for the provision of additional FMLM data to the Board. They claim aggregated data would not be useful to rail customers essentially because each shipper's situation is different.

Generally, in reply to the railroads' opposition comments, PRFBA finds it to be counterintuitive that they do not want to demonstrate how they perform for their customers. If the data would show that the railroads are doing a great job providing service, this would seem to be beneficial to the railroads. It would also seem to be a great marketing tool if a railroad's on-time performance numbers were high.

With respect to the AAR point about the many variables that can impact FMLM, PRFBA does not disagree that there are a wide variety of factors that go into FMLM including weather and coordination with shippers and other transportation providers. However, that is the case with all of the data that is reported to the Board in EP 724 (Sub-No. 4). These factors, like in EP 724, can be dealt with in providing this data by making exceptions or understanding how these variables impact the data when analyzing the numbers.

Moreover, regarding the AAR point about a better understanding of the purposes for the FMLM information, this argument seems somewhat disingenuous as various shipper groups have publicly expressed why this data would be helpful to them and the Board. Foremost, rail shippers have been subjected to unreliable service since the increased use of PSR began in 2017 along

with large job cuts and need to have a better idea of how their railroads are performing through FMLM data. If one railroad has decided to make massive job cuts to its train and engine service employees, thereby resulting in unreliable service, shippers want to be aware of this situation and may want to use a railroad that has not made these drastic changes to its workforce. Absent such data, the Board, shippers, and receivers lack relevant information as to how the rail networks are actually performing and whether carriers are providing, and shippers are receiving, adequate service. The data is also particularly important for assessing the extent to which carriers should be allowed to assess demurrage charges ostensibly designed to help maintain network fluidity when the carriers may not be doing their part to provide adequate service to shipper facilities. The data is also constructive for those shippers and receivers that are forced to schedule their day-to-day and hour-to-hour activities around railroad deliveries and pick-ups, with no assurances as to when their local service will occur, but with the certainty that they will face demurrage if they are not ready to receive or supply their railcars for transport when it does occur. Importantly, the Board's major responsibility is to ensure that the entire freight rail network is performing adequately. Without this FMLM information, the Board will struggle to have a true assessment of how the rail system is operating – the Board cannot provide oversight over two segments of a movement that it cannot measure.

Third, AAR argues that any FMLM reporting requirements should take into account the costs and benefits to stakeholders and the Board. As noted in the preceding paragraph, the benefits of this information are many. In addition, the costs are limited because as the railroads point out in their comments, this information is already collected by them for the most part.

Fourth, AAR points out that the Board must consider competitive concerns that may arise from the disclosure of FMLM information. However, the Board is certainly capable of dealing

with these issues as it does with respect to waybill and the existing rail performance data. In other words, this concern is easily handled by the Board.

While PRFBA does not dispute that the railroads provide information to their customers as set forth in their individual comments, this data has proven to be insufficient and not all encompassing with respect to actual FMLM service; otherwise, shippers would not be before the Board now seeking FMLM data that is not under the sole control of the railroads.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data regarding on-time performance and switching. The railroad should report the number of switches it commits to provide in its weekly switch service plan and the time window that the switch is to be performed. Weekly or monthly, the railroad should then report the number of missed switches against that switch service plan. A completed switch should be defined as all available cars for placement or pickup to be moved within the time windows specified. Any car switches or time window missed would be considered a missed switch. The railroads should also provide on-time performance metrics based on their car trip plans, allowing a 24-hour delivery window. On-time performance should be measured from origin shipper release date to destination when actually placed or constructively placed. PRFBA believes these simple requirements would measure FMLM sufficiently to provide shippers and the Board with the information both need to do their jobs.

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott
GKG Law, P.C.
1055 Thomas Jefferson St., NW
Suite 500
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

Attorney for PRFBA

Dated: February 17, 2022