

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 2)

**Summary of Ex Parte Meeting Between Association of American Railroads and
Surface Transportation Board Member Robert Primus
November 28, 2023**

AAR Attendees:

- Fred Miller, Associate General Counsel and Government Affairs Liaison
- Amber McDonald, Assistant General Counsel
- Ben Horwich, Counsel to Association of American Railroads
- Carson Scott, Counsel to Association of American Railroads

STB Attendees:

- Hon. Robert Primus, Member
- Christopher Diamond, Attorney Advisor

Summary:

AAR expressed its support for the Board's focus on remedying inadequate service. AAR explained its view that the Proposed Rule's framework is appropriately directed at identifying problems and putting the right information before the Board such that it can determine the appropriate solutions to those problems. AAR noted that it supports switching as a solution where: (1) a railroad consistently does not provide adequate service under the circumstances and cannot cure its failure; (2) a safe, practicable alternative service will remedy the service inadequacy; and (3) the shipper has a compelling reason for that alternative service, considering the context of the interests of other stakeholders.

AAR discussed the various mechanisms for presenting the Board with, and the Board evaluating, the necessary information to make such a determination: the petition itself, the railroad's presentation of its affirmative defenses, and the ultimate Board findings. AAR emphasized its view that the distribution of responsibility for information gathering across these mechanisms is important but secondary to the goal of bringing all relevant information before the Board for its consideration.

AAR noted that improving communication between shippers and railroads is important. It explained the ways in which it believes proceedings under the Proposed Rule might help foster this communication. Member Primus expressed agreement regarding the importance of communication. He noted that ideally, railroads and shippers would communicate with one another and settle their own disputes, and that the Proposed Rule is meant to act as a guardrail

that helps to facilitate such private resolution, and provides a tool for formal resolution if necessary.

AAR offered its views on some of the other ways in which the Proposed Rule could be refined to promote resolution of service issues outside of formal proceedings. Specifically, AAR explained that allowing for a period during which a railroad could cure a metrics failure would promote informal resolution in certain cases.

AAR expressed its view that where the metrics levels are set will impact what cases are brought before the Board and the nature and circumstances of those cases. AAR noted that it is continuing to work on an empirical analysis of the Proposed Rule's metrics.