

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 334 (Sub-No. 8A)

JOINT PETITION FOR EXEMPTION OF ARBITRATION RULE
FROM APPLICATION OF 49 U.S.C. § 10706 AND MOTION TO DISMISS

REPLY OF THE ASSOCIATION OF AMERICAN RAILROADS TO
THE PETITION TO REOPEN AND CONDITION OR REVOKE APPROVAL

ENTERED
Office of Proceedings
April 15, 2024
Part of
Public Record

The Association of American Railroads (“AAR”) replies in opposition to the Petition to Reopen and Condition or Revoke Approval (“Petition”) filed by the Railway Supply Institute (“RSI” or the “Petitioner”).¹ Pursuant to 49 U.S.C. §§ 1322(c) and 10706(c), and 49 C.F.R. § 1115.4, the Petitioner seeks the reopening of EP No. 334 (Sub-No. 8A), review of Rule 25 of the AAR Code of Car Hire (“Rule 25” or the “Arbitration Rule”), and termination of the approval of Rule 25 by the Surface Transportation Board (“Board”)—absent an as-yet-unidentified “solution” that addresses RSI’s allegation that the Arbitration Rule has “fail[ed] to provide an incentive to invest in an adequate boxcar fleet.” AAR opposes the petition because the standards for granting RSI’s petition have not been met.

On its face, the petition fails to meet the statutory or regulatory thresholds that (1) there has been a material error, new evidence, or substantially changed circumstances, or (2) the public interest and the Rail Transportation Policy (“RTP”) require a change to the conditions

¹ See RSI, Petition to Reopen and Condition or Revoke Approval, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Mar. 25, 2024) (“RSI Petition”).

of approval for, or termination of, Rule 25. The data contradicts Petitioner’s argument that there is a “boxcar cliff.” In addition, the Arbitration Rule supports agreements of the parties as to the appropriate rate, just as the Interstate Commerce Commission (“ICC”) intended. Moreover, the Board should deny the petition because RSI has inappropriately attempted to circumvent the established methods for amending the Arbitration Rule.

Essentially, the Petition asks the Board to artificially prop up the return that the members of RSI—which are neither railroads nor railroad customers, but rather companies that make money from investing in rail equipment and charging for its use—will receive on those investments. The Petition makes this request even as demand for boxcars has fallen. That sort of market intervention, particularly where it will necessarily *raise* the costs of freight transport, is inconsistent with the Board’s mandate.

BACKGROUND

“Car hire (or per diem) charges are assessed by railroads that own or control rail freight cars when their cars carry revenue-producing traffic over the lines of other railroads.”² To be clear, the Car Hire Rules apply only to railcars, including boxcars, bearing railroad reporting marks. Companies like those included among RSI’s members are free to purchase boxcars and register them with their own marks, and thus avoid the Car Hire Rule system entirely. Instead, they purposefully *seek out* railroad marks and voluntarily *choose* to participate in the Car Hire Rule system—the very system that they now criticize.

² Joint Petition for Rulemaking on Railroad Car Hire Compensation, EP 334 (Sub-No. 8) (STB served Apr. 22, 1997), at 1.

Beginning in the 1960s, car hire rates were set pursuant to a formula prescribed by the Interstate Commerce Commission (“ICC”).³ However, as RSI acknowledges, this flawed system “‘failed to adjust rationally to changes in the supply and demand for cars’ and the rail industry began experiencing ‘significant freight car surpluses’ while car hire rates ‘continued to rise.’”⁴ Accordingly, in 1992, the ICC moved to a “market-oriented approach to setting car hire rates,” phasing out prescription of car hire rates on railroad-marked cars (“deprescription”), as well as establishing the Arbitration Rule.⁵

The Board has acknowledged that “[t]he Arbitration Rule is an integral part of the car hire deprescription.”⁶ Stated simply, Rule 25 of the Code of Car Hire Rules “is an agreement among the subscribing railroads that governs the negotiations of car hire rates on deprescribed cars and the arbitration of related disputes. It embodies a bid and offer process for negotiating charges; clarifies how negotiations proceed and, if necessary, how disputes are arbitrated; and determines the applicable (‘default’) car hire charges pending the adoption of new negotiated or arbitrated charges.”⁷

³ See, generally, Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8), EP 334 (Sub-No. 8A), 9 I.C.C.2d 80 (Oct. 23, 1992).

⁴ RSI Petition at 1 (quoting Car Hire Regulation, EP 334 (Sub-No. 6) et al., 1992 ICC LEXIS 34, at *3 (ICC Feb. 18, 1992)). See also Southern Pac. Transp. Co. v. ICC, 69 F. 3d 583, 585 (D.C. Cir. 1995) (“In 1977, the ICC adopted a formula that prescribed car hire rates for a variety of car types. The ICC’s approach was a flop. The most troubling defect was its failure to adapt to changing market circumstances.” (internal citations omitted)).

⁵ Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8), EP 334 (Sub-No. 8A), 9 I.C.C.2d at 80.

⁶ Joint Petition for Rulemaking on Railroad Car Hire Compensation, EP 334 (Sub-No. 8) (STB served Apr. 22, 1997), at 1.

⁷ Id.

ARGUMENT

The law provides that “[t]he Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances— (1) reopen a proceeding; (2) grant rehearing, reargument, or reconsideration of an action of the Board; or (3) change an action of the Board.” 49 U.S.C. § 1322(c). Similarly, the Board’s regulations at 49 C.F.R. § 1115.4 provide that, a person may file a petition to reopen any administratively final actions, accompanied by a statement detailing “the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances.” Finally, section 10706(c) provides that “[t]he Board may review an agreement approved under subsection (a) . . . and shall change the conditions of approval or terminate it when necessary to comply with the public interest” and further the Rail Transportation Policy. 49 U.S.C. § 10101. RSI has failed to show either that (1) there has been a material error, new evidence, or substantially changed circumstances, or (2) the public interest and the RTP require a change to the conditions of approval for, or termination of, Rule 25. 49 U.S.C. §10706(c). Accordingly, the Board should deny RSI’s petition.

I. RSI has failed to show a material error, new evidence, or substantially changed circumstances warrant their requested relief.

As RSI concedes, “no matter the claimed basis for reconsideration (new evidence, changed circumstances, or material error), the alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected” in order for the

requested relief to be granted.⁸ However, there is no “boxcar cliff,” as RSI alleges. Rather, the boxcar fleet has grown over the past two years. In addition, increased boxcar size and capacity, as well as improved efficiency across an increasingly homogeneous fleet, has meant that fewer boxcars are needed overall. Further, boxcar demand is down, and thousands of boxcars are sitting in storage. The “boxcar cliff” is a catchy phrase for a nonexistent problem.

Moreover, despite RSI’s complaints about the Arbitration Rule, the default rate is rarely used in practice.⁹ This is exactly the outcome desired and intended by the ICC when it approved the rule. As it noted at the time, “[t]he arbitration rules do not stifle competition, but merely allow the carriers to rely on freely negotiated rates in most situations with binding arbitration as a last resort, rather than being bound by a system of rates prescribed by” the agency.¹⁰

A. There is no “boxcar cliff.”

Fearmongering about a so-called “boxcar cliff” is nothing new. In 1983, the ICC noted that “[c]ertain parties contended that the proposal [to exempt boxcars from regulation] would result in inadequate compensation to car owners, choking off new investment and reducing the availability of boxcars.”¹¹ These same parties “asserted that these consequences would be

⁸ Seven County Infrastructure Coalition--Rail Construction & Operation Exemption--In Utah, Carbon, Duchesne, and Uintah Counties, Utah, Docket No. FD 36284 (STB served Sept. 29, 2021), 2021 STB LEXIS 232, *7; see also Montezuma Grain Co., LLP v. STB, 339 F.3d 535, 541 (7th Cir. 2003) (“In order to reopen an administratively final action, petitioners had to show that the alleged new circumstances warranted a different result, and they failed to meet their burden.”) (internal citation omitted).

⁹ As discussed more below, approximately {{ [REDACTED] }} of all default-rate eligible boxcars operate pursuant to the default rate only.

¹⁰ Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8A), 9 I.C.C.2d at 90.

¹¹ Exemption from Regulation--Boxcar Traffic, EP No. 346 (Sub-No. 8), 367 I.C.C. 747, 758 (ICC served Oct. 21, 1983) (aff’d in part, rev’d in part by Brae Corp. v. U.S., 740 F.2d 1023 (D.C. Cir. 1984)).

contrary to requirements of the rail transportation policy”—just as RSI does now.¹² However, the ICC “concluded that any adverse effects would be limited in extent and duration especially if bilateral agreements or contracts were entered by parties, that any needed new investment would still be made, and that any disruptions in car supply would be accommodated as car owners and users adapt to the new system.”¹³ As no boxcar cliff has materialized, it appears that the agency’s conclusion was correct.

Replacement rate. RSI alleges that “the Arbitration Rule is not producing rates that encourage investment in boxcars to replace retiring cars at adequate levels to avert a severe shortage.”¹⁴ This argument is unsupported by the data. To the contrary, since 2021, boxcars are being replaced at a higher rate than they are being retired.¹⁵ As a result, the total number of boxcars in the North American boxcar fleet has grown steadily since 2022, up from a low of approximately 99,000 active boxcars in January 2022 to more than 104,000 boxcars by April 2024.¹⁶ In addition, as discussed below, the capacity of new boxcars is greater than those being retired.

The growing boxcar fleet directly contradicts RSI’s argument that there are not sufficient incentives to invest in boxcars. Growth incentives need not solely be tied to car hire rates; instead, incentives may be tied to the revenue generated by railroads when they transport

¹² Id. at 758.

¹³ Id.

¹⁴ RSI Petition at 15.

¹⁵ See Verified Statement of M. Rapik Saat (“Saat V.S.”) at ¶ 5.

¹⁶ See id. TTX contributed {{ [REDACTED] }} of the new boxcars added to the North American fleet since 2021. Private owners, like RSI’s members, have contributed approximately {{ [REDACTED] }} of the newly added boxcars in that same period. See id. at ¶¶ 15-18. The continued contributions of private owners further refute RSI’s argument that there are insufficient investment incentives.

goods using boxcars. By contrast, RSI's members, which rely solely on car hire fees, seek to tilt the playing field by influencing rates to reflect the number of boxcars from which they *want* to receive income.¹⁷ "[T]hese investors do not have a constitutional right to a regulatory guarantee that they will receive a particular return."¹⁸ Though RSI's petition lacks any substantive proposal of a particular rate or means of calculating new boxcar rates, it appears that RSI is motivated by a desire for increased car-hire rates, which experience of the 1970s and 1980s shows would likely lead to an unnecessary surplus of boxcars—the very impetus for depreservation.¹⁹ "In a market-oriented car compensation system, future car investments will be made only when they are needed."²⁰ Moreover, if the Board were to modify the system to raise boxcar rates to create an artificial demand for boxcars, industry costs would increase, and as the ICC noted, those increases could ultimately harm shippers and the competitiveness of the rail industry.²¹

Boxcar size and capacity. Replacement boxcars tend to be larger than the legacy fleet, so there is not a need for a one-for-one replacement. The old, shorter 50-ft boxcars are being

¹⁷ "[T]he Commission will no longer give boxcar investors any semblance of a future guarantee concerning car compensation or the return on their investment. That return must be dictated by forces of supply and demand. To do otherwise, as some of the exemption opponents argue, would be counterproductive, reducing efficiency, competitiveness and profitability of boxcar service, and it is contrary to the goals of the rail transportation policy enacted by Congress [at] 49 U.S.C. 10101a." Exemption from Regulation--Boxcar Traffic, EP No. 346 (Sub-No. 8), 367 I.C.C. at 761.

¹⁸ Id. at 769. "Indeed, such a guarantee would not be consistent with the mandate of the rail transportation policy, 49 U.S.C. 10101a(1), 'to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.'" Id.

¹⁹ "Another defect of prescribed car hire is that it creates at least the illusion of a guaranteed return on investment, encouraging investors to acquire cars without regard to the adequacy of the existing car fleet." Id. at 756.

²⁰ Id. at 773.

²¹ "[H]igher rental costs must ultimately be passed on to shippers, making boxcar service less competitive with truck transportation." Id. at 756.

replaced with new, longer 60-ft boxcars; the former were capable of carrying 83 tons per load, while the latter are capable of carrying 103.2 tons per load.²² The replacement of lower gross rail load (“GRL”) capacity boxcars with higher GRL boxcars has led to a greater overall fleet capacity.²³

Fleet efficiency. Historically there were many specialty or boutique configurations of boxcars (*e.g.*, special load securement, grain doors, racks, etc.).²⁴ However, as replacement boxcars move away from those customizations, it has become easier for cars in the fleet to be repositioned efficiently for their next load rather than returned empty to the prior origin, which increases car utilization efficiency overall. This, again, reduces the number of boxcars necessary to serve the same number of customers.

Boxcar demand. Despite the increased availability of boxcars, demand for boxcars is down, as shown by the significant number of boxcars in storage. In May 2022, the number of boxcars in storage reached a low of approximately 7,000; however, that number has since grown to more than 19,000 boxcars—or 18.4% of all boxcars—in storage today.²⁵

B. The Arbitration Rule operates as the ICC intended—by supporting agreements of the parties as to the appropriate rate.

The ICC contemplated that, under depreservation, car hire rates would be “set through agreements of the parties whenever possible.”²⁶ Today, this is how the vast majority of boxcar

²² See *Saat V.S.* at ¶ 12.

²³ See *id.* at ¶ 11.

²⁴ To the extent the need for customization continues to exist, shippers are permitted to supply their own equipment.

²⁵ See *id.* at ¶¶ 7-9.

²⁶ Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8A), 9 I.C.C.2d at 83.

rates are set. Indeed, as of April 1, 2024, {{ [REDACTED] }} boxcars were eligible for negotiated rates based on their ownership type.²⁷ Of those {{ [REDACTED] }} boxcars, each of which can operate pursuant to multiple rates, just {{ [REDACTED] }} boxcars—or {{ [REDACTED] }} of eligible boxcars—operated pursuant to the default rate only.²⁸

Whenever a railcar owner or user of boxcars bearing railroad reporting marks proposes to establish a new rate or change the existing rate to be paid for the use of a car, the parties to the transaction are free to negotiate agreements regarding car hire rates directly. If such negotiations fail or the railcar owner or user wishes to forgo negotiations, the parties may elect to utilize Rule 25 of the Code of Car Hire Rules.

If the railcar owner or user elects to operate pursuant to Rule 25, AAR will facilitate this process through the administration of an electronic bid-and-offer process, codified in AAR Car Hire Rule 25. As part of this process, the parties file their proposed rates with AAR. The proposed rate will automatically take effect if the proposed rates filed with the AAR are identical.

If negotiations are unsuccessful, the parties may resolve the dispute as they see fit, using any number of methods, including their own dispute resolution procedure. Alternatively, the parties may elect to use Rule 25, which utilizes an American Arbitration Association (“AAA”) arbitrator to determine the rate.²⁹ As the ICC observed, this approach “properly encourages

²⁷ See Saat V.S. at ¶ 18.

²⁸ See id.

²⁹ See Southern Pac. Transp., 69 F. 3d at 585.

arbitration without being unduly coercive.”³⁰ The arbitrated rate is effective for at least one year, and it may be replaced by a bilateral agreement or subsequent arbitration agreement.³¹

Only in those uncommon instances where the owner of the railcar bearing railroad reporting marks and the using railroad cannot agree on a negotiated rate or the proposed rate is not one that AAR automatically accepts, *and* the parties reject any of the possible dispute resolution options, *then* a so-called “default rate” is assigned to the car for purposes of determining car hire paid by that particular railroad.³² The “default rate” is equal to the lowest negotiated positive rate in effect for that equipment type at the end of the previous quarter. To be clear, the default rate table is only used for railroad marked cars built or rebuilt after December 31, 1992, as well as private cars changing to railroad reporting marks for the first time. Therefore, any private, non-railroad owner—like RSI’s members—may avoid the entire car hire process by simply electing to not mark their cars with a railroad mark.

Thus, despite RSI’s criticisms of the default rate, the rate is rarely used in practice. As noted above, as of April 1, 2024, just {{ [REDACTED] }} of eligible boxcars operated pursuant to the default rate only.³³ In other words, the Arbitration Rule functions as the ICC intended,

³⁰ Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8) EP 334 (Sub-No. 8A), 9 I.C.C.2d at 86.

³¹ “There is no reason to believe that arbitrated car hire rates would be higher or lower than rates [the ICC] would set.” Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8A), 9 I.C.C.2d at 90.

³² The railcar owner remains free to negotiate additional rates on that car with other railroads.

³³ See Saat V.S. at ¶ 18.

supporting the setting of car hire rates “through agreements of the parties whenever possible.”³⁴

The facts and the data do not support RSI’s arguments. The default rate is infrequently applied, and thus, it cannot be blamed for a lack of incentive to invest in the boxcar fleet. Indeed, there is no evidence that investment incentives are lacking, as the boxcar fleet has grown in recent years. Moreover, a high boxcar replacement rate, coupled with increased boxcar size and capacity, improved fleet efficiency, and a decreased demand for boxcars, are sufficient protection against any alleged “boxcar cliff.”

With no boxcar cliff to rest upon, RSI’s arguments crumble. The Board’s prior decision would not have been “materially affected” by the Petitioner’s allegations.³⁵

II. RSI has not shown that public interest and Rail Transportation Policy require the requested relief.

The Petitioner argues that “[t]he passage of time has shown that several of the ICC’s fundamental assumptions and conclusions leading to its approval of the Arbitration Rule were wrong and that the Arbitration Rule, in its current form, does not comply with the public interest or further the Rail Transportation Policy”³⁶ In support of this position, RSI makes a

³⁴ Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, EP 334 (Sub-No. 8A), 9 I.C.C.2d at 83. Petitioner also argues “that a car owner who is a net purchaser of car hire could negotiate a rate on a car that it does not intend to use, and in so doing drag down the default rate.” RSI Petition at 18. However, parties are free to refuse to accept a negotiated rate and elect mediation, seek arbitration, or elect the default rate. As such, there is never a need for a car owner to accept a negotiated rate that they believe to be artificially low. Additionally, private car owners, like RSI’s members, are not required to register their cars with railroad marks and, thus, need not enter the car hire system at all. However, some non-railroad car owners *choose* to register their cars under railroad marks for the very purpose of utilizing the car hire process.

³⁵ Seven County Infrastructure Coalition--Rail Construction & Operation Exemption--In Utah, Carbon, Duchesne, and Uintah Counties, Utah, FD 36284 (STB served Sept. 29, 2021), 2021 STB LEXIS 232, *7; see also Montezuma Grain Co., LLP v. Surface Transp. Bd., 339 F.3d at 541.

³⁶ RSI Petition at 2.

number of points that ultimately boil down to a repeat of their argument that “the Arbitration Rule jeopardizes the adequate supply of boxcars.”³⁷ However, as clearly demonstrated above, there is no real or present danger of a “boxcar cliff.” Petitioner has established *its members’* interests in supplying more boxcars and making a higher return on the fleet, but has presented no evidence of any *public* interest that is threatened by the current set of rules. As such, the Petitioner has failed to make an adequate showing that public interest and RTP require a reopening of the proceeding.

First, RSI claims that “railcar users have little to no market-based incentive to agree to a car-hire rate that exceeds the default rate.”³⁸ However, the fact remains that approximately {{ [REDACTED] }} of eligible boxcars operate pursuant to the default rate only.³⁹ This fact plainly undermines RSI’s claims and shows that depreservation is functioning as intended. Even so, RSI’s members are not required to register their cars with railroad marks, which is a prerequisite to even having the default rate apply to their cars. They could utilize their own marks and negotiate rates freely. Instead, RSI’s members *choose* to enter the car hire process—the very process they now propose to upend.

Second, RSI argues that “the ICC’s belief that an arbitrator would select a rate offer ‘that most closely approximates a market rate’ . . . was misplaced.”⁴⁰ Yet, confoundingly, RSI admits

³⁷ RSI Petition at 8. RSI also complains that the Arbitration Rule gives TTX a “competitive advantage.” *Id.*

³⁸ RSI Petition at 9.

³⁹ See *Saat V.S.* at ¶ 18.

⁴⁰ RSI Petition at 11 (quoting Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss, 9 I.C.C.2d 80, 88 (1992)).

that “data show no rates awarded in arbitration for boxcars in at least a decade.”⁴¹ Thus, RSI’s concern about arbitrator awards appears to be based on supposition alone. Mere conjecture is not a valid basis for reopening a proceeding.⁴²

Third, the Petition offers an imagined scenario in which RSI essentially accuses the railroads of “abuse and manipulation of the default-rate standard to further suppress car-hire rates.”⁴³ RSI argues that this has resulted in the default rates for several boxcar types dropping to “suspiciously low” levels.⁴⁴ Not only is this inflammatory allegation against the railroads false, it is also unsupported by evidence. The default rate is not “suspiciously low.” Rather, as discussed above, the car hire system, when coupled with railroads’ incentives to invest in the cars needed to earn transportation revenues, yields rates sufficient to support the needed boxcar fleet size.

Based on these points, Petitioner claims that the alleged “boxcar cliff” will “[p]ush[] traffic to truck,” which “is inconsistent with the public interest in safe transportation, since

⁴¹ RSI Petition at 12. Moreover, a lack of arbitrated rates is no cause for concern. To the contrary, it was what the ICC intended: “To the extent that bilateral agreements eventually become the norm, and arbitrated or adjudicated rates the exception, this program will carry out the Rail Transportation Policy which emphasizes allowing competition to set rates to the maximum extent possible so as to minimize federal regulatory control. 49 U.S.C. § 10101a(1) and (2).” Joint Petition for Rulemaking on Railroad Car Hire Compensation; Joint Petition for Exemption of Arbitration Rule From Application of 49 U.S.C. 10706 and Motion to Dismiss, 9 I.C.C.2d at 92 (emphasis added).

⁴² “Unsupported speculation” about a possible future occurrence “is not a sufficient basis to reopen a proceeding.” See Gauley River Railroad, LLC--Abandonment and Discontinuance of Service--In Webster and Nicholas Counties, WV; CSX Transportation, Inc.--Discontinuance of Service--Webster and Nicholas Counties, WV, STB Docket No. AB-559 (Sub-No. 1X), STB Docket No. AB-55 (Sub-No. 572X), 2000 STB LEXIS 576, *10 (STB Served Sept. 27, 2000).

⁴³ RSI Petition at 12.

⁴⁴ Id.

even AAR acknowledges that trucking is not as safe as rail transportation.”⁴⁵ AAR agrees: Freight rail is the safest way to move goods over land. And AAR’s members have a vested interest in shifting more freight from truck to rail. As the ICC explained, however, it is artificially higher rates for boxcars that will shift freight to truck,⁴⁶ not an alleged “boxcar cliff.” Regardless, as explained above, the evidence shows that there is no boxcar cliff.⁴⁷

III. RSI ignored the established methods for amending the Car Hire Rules.

The Board “view[s] the Arbitration Rule as part of a dynamic body of industry rules and protections concerning car hire.”⁴⁸ This dynamic body of industry rules is overseen by AAR’s Equipment Assets Committee (“EAC”), which is comprised of a variety of stakeholders, *including* RSI members. Moreover, “representatives from many interested parties typically attend meetings and may voice their opinions and concerns.”⁴⁹ The Board has previously recognized that “adequate safeguards exist to protect those who oppose specific amendments to the Arbitration Rule,” as well as those who would participate in the amendment process.⁵⁰

⁴⁵ Id. at 19 (citing AAR, Why Freight Rail Is the Safest Mode for Hazmat, <https://www.aar.org/article/freight-rail-safest-mode-hazmat/> (last visited March 8, 2024)).

⁴⁶ Exemption from Regulation--Boxcar Traffic, EP No. 346 (Sub-No. 8), 367 I.C.C. at 748. The ICC explicitly addressed the concern of boxcar service shifting to trucks when it exempted from regulation the freight rates on most boxcar service, writing: “As competition from the trucking industry has become ever stronger, boxcar service has lost much of the truck compatible traffic and has lost varying amounts of the remainder of the traffic that historically moved by boxcar. This trend will not be arrested unless the railroads can enhance the attractiveness of boxcar service through cost reduction and more flexible pricing. The exemption will make these possible.” Id.

⁴⁷ Petitioner also dedicates several pages to argument about TTX’s market position and its ultimate influence on the boxcar cliff. However, as no boxcar cliff exists, this argument is moot.

⁴⁸ Joint Petition for Rulemaking on Railroad Car Hire Compensation, EP 334 (Sub-No. 8) (STB served Apr. 22, 1997), at 2.

⁴⁹ Id. at 3.

⁵⁰ Id.

RSI is fully aware of the processes and procedures available to it and, in fact, pursued a different proposal before the EAC more than five years ago.⁵¹ Yet, now, with a new proposal that has never been raised with the EAC, the Petitioner elected to leapfrog the EAC and pursue relief directly from the Board. As such, those with the most in-depth knowledge of the Car Hire Rules and those best situated to consider such proposals have not been permitted to hear, discuss, and consider RSI's new proposal. While the Petitioner seeks a 120-day "negotiation" between AAR and RSI, there is no basis for the Board to effectively oversee RSI's participation in the EAC process. If RSI participates in the EAC process and does not like the outcome, it can then seek relief from the Board. But the Board should not reward the Petitioner for its failure to adhere to the designated process.

CONCLUSION

Based on the foregoing, the Board should deny RSI's Petition to Reopen and Condition or Revoke Approval, as the Petitioner has failed to meet the standards established by 49 U.S.C.

⁵¹ See RSI Petition at App'x C (May 13, 2019 Letter from Jeffrey J. Usher, AAR, to Randall Thomure, RSI). RSI's February 25, 2019 proposal sought a change of the default rate from the lowest, positive, negotiated rate to the average negotiated rate in effect during the prior quarter. Id. The proposal was discussed by members of the EAC, as well as its Car Hire Rates Processes & Procedures Task Force, and while the measure was not approved at that time, RSI was advised that the EAC "remains open to consider means of improving the Code of Car Hire." Id.

§§ 1322(c) and 10706(c), and 49 C.F.R. § 1115.4.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "K. Kirmayer", is positioned above the typed name.

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
425 Third Street, SW, Suite 1000
Washington, DC 20024

April 15, 2024

EXHIBIT 1

BEFORE THE
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REPLY VERIFIED STATEMENT OF M. RAPIK SAAT, Ph.D.

1. I am M. Rapik Saat, Director of Operations Analysis for the Association of American Railroads (AAR). I initiate, design, direct and conduct technically complex research, data analysis and evaluation of regulatory proceedings and legislative proposals for AAR. I work extensively with Railinc to develop and utilize very large and complex data structures for development of information on rail operations. Previously, I led an analytics research group as Research Assistant Professor at the Rail Transportation and Engineering Center (RailTEC) at the University of Illinois at Urbana-Champaign (UIUC). I have a BS, an MS and a Ph.D. in Civil Engineering, all from UIUC, with concentrations on rail transportation and operations research. I also have an MS in Applied Economics from Johns Hopkins University.

2. I am submitting this Verified Statement to report my findings on the purported “boxcar cliff” described in the Petition to Reopen and Condition or Revoke Approval filed by the Railway Supply Institute on March 25, 2024, before the Surface Transportation Board.

3. I use data from various AAR reports and industry data maintained by Railinc, a fully owned AAR subsidiary to show:

- 1) the current excess supply of boxcars based on the recent increases in fleet size and cars in storage,
- 2) the corresponding increases in boxcar capacity in terms of available aggregated load weight, cubic volume and square-foot area with increased fleet size,
- 3) TTX has contributed {{ [REDACTED] }} of the new boxcars added to the North American fleet since 2021, and private owners have continued investing in new boxcars as reflected by their approximately {{ [REDACTED] }} contribution of the newly added boxcars, and
- 4) About {{ [REDACTED] }} or {{ [REDACTED] }} of eligible boxcars operate pursuant to the default rate only.

I. The boxcar fleet size has increased from the trough in Jan 2022.

4. AAR publishes a monthly Cars in Storage report that tracks the total fleet size and the number of rail cars in storage by car types based on the data in Umler¹ and reported car events in the TRAINII² system.

5. Based on Umler, as shown in Figure 1, the boxcar fleet reached a low in January 2022, but has since grown. In January 2022, there were 99,196 active boxcars in the revenue-earning fleet of North America. As of April 1, 2024, there were 104,247 active boxcars in Umler.

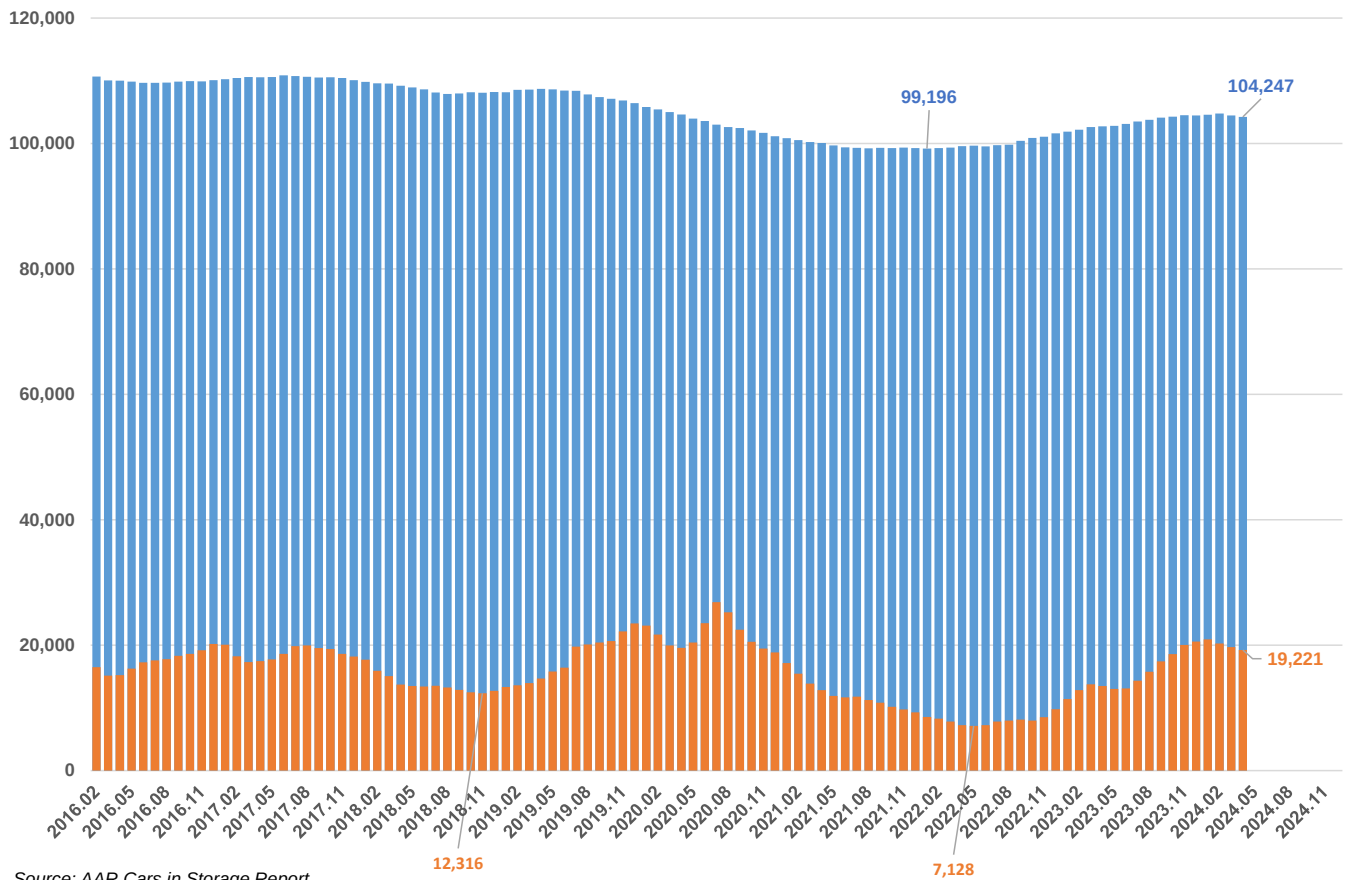
¹ Umler is a database system, maintained by Railinc, that contains the inventory list of all rail equipment in North America. The system identifies internal and external dimensions, capacities, weight information, and other specific characteristics of freight cars—as well as intermodal trailers and containers. It also serves as the base file for other standard industry equipment reference and management systems. <https://public.railinc.com/products-services/umler-system>

² The Railinc TRAIN II system is the mechanism used by over 500 railroads to report railcar movement events to Railinc for sharing with connecting railroads and their customers. <https://public.railinc.com/sites/default/files/documents/TrainII.pdf>

6. The increase in the boxcar fleet size since January 2022 shows that the replacement rate is higher than the retirement rate in recent years, nullifying the purported “boxcar cliff.”

FIGURE 1

Monthly **Total Boxcars in Service** and **Boxcars in Storage**



II. Over 19,000 boxcars are currently in storage indicating an excess supply of the cars to the market.

7. Also shown in Figure 1 are the monthly numbers of box cars in storage³. As of April 1, 2024, there were 19,221 or 18.4% boxcars in storage.

8. At the peak of boxcars usage in May 2022, 7,128 or 7.2% box cars were in storage – they were available, but not being used in the previous 60 days.

9. Figure 2 shows the distribution of the boxcars in storage by different type and length categories. As a group, the 18.4% boxcars in storage level on April 1, 2024 is well above the historical average since the inception of the Cars in Storage report in 2016.

FIGURE 2



ASSOCIATION OF
AMERICAN RAILROADS

| Freight Cars in Storage Report

April 1, 2024

						Percent in Storage ¹			
Car Group	Letter Code	Sub-Type	Equipment Codes	All Cars in Service	Cars in Storage	Current	Hist Avg ²	Comparison	
Box Cars									
1	A, L	Equipped Box, <59' IL	A1xx – A4xx, Lx46, Lx47, Lx76, Lx77	38,747	9,087		23.5%	15.5% Above Average	
2	A, L	Equipped Box, 59' or longer IL	A5xx – A8xx, Lx48, Lx78	49,138	6,279		12.8%	12.5% Above Average	
3	B	Unequipped Box, <59' IL	B1xx – B4xx	11,338	3,534		31.2%	19.0% Above Average	
4	B	Unequipped Box, 59' or longer IL	B5xx – B8xx	5,024	321		6.4%	15.6% Below Average	
				104,247	19,221		18.4%	14.8% Above Average	

III. Boxcar aggregated capacity in terms of load weight, cubic volume and square-foot area has grown significantly since 2022, with available weight and volume at their greatest levels ever.

10. I next examined three boxcar fleet attributes: 1) load limit (the weight in pounds of lading that can be carried), 2) cubic feet of volume capacity, and 3) square feet of area

³ Rail cars are defined as in storage if they had not moved while loaded in the previous 60 days and have moved empty since their last loaded move. These cars are “in storage” since they have been available, but loads for them have not.

capacity. For each of these three attributes, I gathered the aggregate quantity for the active box cars in Umler for each week since the start of 2017. Figures 3 through 5 show the results of this analysis.

11. With increased boxcar fleet size since early 2022 as discussed in Part I, there has been corresponding increases in boxcar aggregated capacity when looking at three different fleet capacity metrics – the available load weight, volume and footprint area to transport the loadings.

12. The increase in the aggregated load weight, volume and surface area are generally due to continued replacement of the old, shorter 50-ft boxcars with the new, longer 60-ft boxcars; the former were capable of carrying 83 tons per load, while the latter are capable of carrying 103.2 tons per load.

FIGURE 3



FIGURE 4



FIGURE 5



IV. TTX has contributed {{ [REDACTED] }} of the new boxcars added to the North American fleet since January 1, 2021.

13. Using Umler, I researched new boxcars added in 2021, 2022, 2023, and the first three months of 2024. This is based on searching the Built_Date in Umler on April 1, 2024 for active box cars built in those four years. This returned {{ [REDACTED] }} box cars.

14. I then broke out the categories of ownership into those owned by TTX, those privately owned, and those owned by Class I railroads based on the stencil mark on the cars. The distribution of ownership (using approximate values) was {{ [REDACTED] }} for TTX; {{ [REDACTED] }} privately owned; and 2,900 Class I ownership.

15. This means that TTX has contributed approximately {{ [REDACTED] }}—of the cars added to the North American fleet since January 1, 2021.

16. In the same period, private owners have continued investing in new boxcars as reflected by their approximately {{ [REDACTED] }} contribution of the newly added boxcars.

V. Approximately {{ [REDACTED] }} of eligible boxcars operate pursuant to the default rate only.

17. I used Railinc's Car Hire Accounting Rate Master (CHARM⁴) database to identify the number of box cars with at least one negotiated rate.

18. As on April 1, 2024, {{ [REDACTED] }} boxcars were eligible for negotiated rates based on their ownership type. Of those {{ [REDACTED] }} box cars, {{ [REDACTED] }} box cars had at least one negotiated

⁴ CHARM is the official source of time and mileage rates on freight cars. The rates contained in these customized files are confidential to each owner and user. They contain rates effective for the current month and are updated each subsequent month with the appropriate deprescribed or prescribed rates effective for the month. <https://public.railinc.com/products-services/car-hire>

rate. In other words, just {{ [REDACTED] }} boxcars—or {{ [REDACTED] }} of eligible boxcars—operated pursuant to the default rate only.

VERIFICATION

I, M. Rapik Saat, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 15th day of April, 2024.



M. Rapik Saat, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April 2024, I caused to be served by electronic mail a copy of the foregoing on the following:

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
Jeff.Moreno@ThompsonHine.com
Jason.Tutrone@ThompsonHine.com



Amber L. McDonald