

SERVICE DATE – APRIL 9, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 334 (Sub-No. 8A)

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

Decided: April 9, 2025

On March 25, 2024, the Railway Supply Institute (RSI) filed a petition under 49 U.S.C. §§ 1322(c) and 10706(c) and 49 C.F.R. § 1115.4, requesting that the Board reopen this proceeding, review Rule 25 of the Code of Car Hire (the Rule), and either condition or terminate the agency's approval of the Rule. (RSI Pet. 1, Mar. 25, 2024.) The Rule, which established the process for setting car-hire rates, was approved in 1992 under 49 U.S.C. § 10706(a) by the Board's predecessor, the Interstate Commerce Commission. (RSI Pet. 1, Mar. 25, 2024); Joint Pet. for Rulemaking on R.R. Car Hire Comp., 9 I.C.C.2d 80, 88-92 (1992). According to RSI, the Rule has failed to produce market-based car hire rates that incentivize investment in the supply of railcars. (RSI Pet. 1, Mar. 25, 2024.) Instead, RSI claims, the Rule is leading to a boxcar supply shortage and has enabled TTX Company, a railroad-owned entity that operates a pool of boxcars, to dominate the boxcar market, contrary to the public interest. (Id. at 1-2, 16.)

The Board has received numerous filings¹ in this docket, including five replies to RSI's petition, a motion for leave to file a surreply and replies thereto, and letters from U.S. Representatives Doug LaMalfa and Pete Sessions. As relevant here, on January 28, 2025, RSI filed with the Board a copy of a letter it sent to a subsidiary of the Association of American Railroads (AAR) discussing RSI's intent to participate in a review of the Rule being conducted by AAR's Equipment Assets Committee (the EAC).² On February 4, 2025, AAR filed with the Board a copy of its response to RSI. On February 24, 2025, RSI filed a copy of another letter sent to AAR concerning the EAC review, and on February 25, 2025, AAR filed a copy of its response to RSI's February 24 letter.

The letters from RSI and AAR indicate that the EAC review of the Rule is underway. (See AAR Letter 1-2, Feb. 25, 2025.) The EAC and interested stakeholders met on February 12, 2025, for a preliminary discussion on the review process. (See id. at 1; RSI Letter 1, Feb. 24, 2025.) The next meeting is scheduled for May 2025. (See RSI Letter 1, Feb. 24, 2025.) According to AAR, at the May EAC meeting, interested parties will have the opportunity to present their concerns regarding the existing framework of the Rule. (See AAR Letter 1-2,

¹ These filings will be addressed at a later date, as needed.

² The EAC is tasked with overseeing the Rule. (AAR Reply 14, Apr. 15, 2024.)

Feb. 25, 2025.) Then, a technical advisory group (TAG) comprised of “self-selected EAC members” will be created to examine those concerns and seek additional information, as needed. (Id. at 2.) The TAG will then present its recommendations to the EAC in October 2025. (Id.; see RSI Letter 1, Feb. 24, 2025.)

In light of the review of the Rule currently underway with the EAC, this proceeding will be held in abeyance pending further Board order. Generally, the Board favors the private resolution of disputes as an alternative to its formal processes where possible. See Assessment of Mediation & Arb. Procs., EP 699, slip op. at 1 (STB served Aug. 20, 2010). Moreover, abeyance is appropriate where it would promote efficiency and not be fundamentally unfair to any party. See Baylands Dev., Inc.—Pet. for Declaratory Ord., FD 36660, slip op. at 4 (STB served Sept. 18, 2023). In this case, abeyance would promote efficiency. The EAC review of the Rule is already underway and could impact or resolve the concerns RSI raises in its petition. Allowing the EAC review to proceed first could facilitate resolution of the dispute among interested stakeholders, rather than through a formal Board proceeding. Indeed, while RSI continues to express interest in the Board granting its petition as soon as possible, it nevertheless acknowledges that EAC review may “produce appropriate changes to the Rule that address RSI’s concerns.” (See RSI Letter 1, Jan. 28, 2025.) Abeyance also would not be fundamentally unfair to any party. As RSI and AAR both have indicated, RSI and some of its members are participating in the EAC review,³ and, as discussed below, RSI will be given the opportunity to inform the Board how it would like to proceed after the EAC review.

To ensure that the Board remains informed regarding the progress of the EAC review, AAR will be directed to inform the Board of any changes to the timeline for that review within 5 days of any such change. Additionally, within 30 days following the conclusion of the review, (1) AAR will be directed to inform the Board of the results, including what, if any, changes to the Rule were approved, and (2) RSI will be directed to inform the Board how it would like to proceed in this docket in light of those results.

It is ordered:

1. The matter is held in abeyance pending further Board order.
2. AAR shall inform the Board of any changes to the timeline for the EAC review of the Rule within 5 days of any such change.
3. Within 30 days after the EAC review concludes, AAR shall inform the Board of the results of the review, including what, if any, changes to the Rule were approved, and RSI shall inform the Board how it would like to proceed in this docket in light of those results.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ (See RSI Letter 1, Jan. 28, 2025; RSI Letter 1, Feb. 24, 2025; AAR Letter 2, Feb. 25, 2025.)