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May 8, 2019

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The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

The Honorable Patrick Fuchs
Vice Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
May 7, 2019
Part of
Public Record

The Honorable Martin J. Oberman
Board Member
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: *Docket No. EP 754, Oversight Hearing on Accessorial and Demurrage Charges*

Dear Chairman Begeman, Vice Chairman Fuchs, and Board Member Oberman:

Pursuant to the Surface Transportation Board's ("Board" or "STB") April 8, 2019 Notice, Grain Craft, the third largest wheat flour miller in the U.S., respectfully submits the following written comments for inclusion into the record of this proceeding.

These comments address the railroads' unfair practices related to issuing demurrage credits when a switch is not performed. For the most part, Class 1 railroads' tariff language is vague on whether, and under what circumstances the railroad will issue credits when it misses switches, and for what cars. In BNSF's case, its demurrage book 6004-D says nothing about issuing credits when BNSF fails to switch in railcars when scheduled. In Union Pacific Railroad Company's ("UP") tariff UP 6004 item 9620-D under credit types (capacity credits), only two days of credit is issued per missed switch. In Grain Craft's experience, however, this credit is limited to the number of cars that our track can physically accommodate at one time. UP's credit system does not consider any other cars that the railroad has "constructively placed" ("CP") outside of our facility because our tracks are full. For example, there could be 40 cars that are on CP status waiting to be switched into the facility on a given day, and the facility can spot 10 cars. If UP misses a switch, none of the 40 cars can be moved that day due to the fault of UP, and they therefore must wait at least another day. However, instead of all 40 cars receiving one day of credit, UP's application of Tariff 6004 item 9620-D results in a credit issued to only 10 cars. This is an unfair practice as it punishes the industry for the railroad's service issues. It also does not consider other cars that are arriving into the area. The missed switches could cause these cars to generate demurrage when it's the railroad's fault that time is accrued. Grain Craft is not certain if CSXT issues credits for missed switches, but this does not appear to be the case. The current version of Tariff

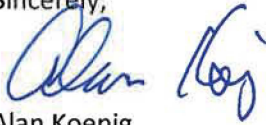
8100, Item 2.1 says nothing about issuing such credits. In 2015, CSXT published a "quick guide" for demurrage and private cars storage which stated, "CSXT makes every effort to switch customers on their regularly scheduled service day. When a customer orders to their capacity and a switch is missed on a regularly scheduled service day, a credit allowance will be given to every car in the yard on constructive placement."¹ However, CSXT appears to have eliminated such credits from its current demurrage program.

To be reasonable and commercially fair, (1) demurrage credits should be issued in all instances where delay is attributable to the railroad; and (2) the terms and conditions for issuing of credits for missed switches and other railroad-caused delay should be spelled out in specific tariff language so there is no ambiguity. Today, the language in most Class I railroad tariffs is vague and left open for interpretation, which places shippers at an extreme disadvantage when disputing charges.

While the allowance mentioned above accounts for cars in CP status, the allowance does not go far enough. The language should also include credits for additional cars that the Class I delivers to a yard during the days after a missed switch that otherwise could have been switched and unloaded with no demurrage had the railroad simply performed its switching as scheduled.

Grain Craft thanks the Board for holding this oversight hearing on demurrage and assessorial charges and thank you for accepting these written comments.

Sincerely,



Alan Koenig

Chief Supply Chain Officer – Grain Craft

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<https://www.csx.com/index.cfm/library/files/customers/publications-tariffs/guide-to-managing-demurrage/>