

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 754

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OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

WRITTEN TESTIMONY ON BEHALF OF CN

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The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”) welcome the opportunity to testify before the Board regarding demurrage and optional services. As with all aspects of CN’s business, our top priority is operating a safe and efficient rail transportation network. Demurrage and optional services play an important role in promoting the network fluidity and high quality service that our customers expect, while providing the additional optional services that some of our rail customers sometimes request. CN welcomes the opportunity to discuss CN’s policies in this area and to answer any questions that the Board may have.

Derek Taylor, Vice-President, Southern Region and Keith Courtoreille, Senior Manager, Service Delivery, will be testifying on behalf of CN at the Board’s upcoming hearing. They will be accompanied by Kathy Gainey, Counsel – US Regulatory Affairs. Written testimony for Mr. Taylor and Mr. Courtoreille is attached.

Respectfully submitted,

/s/ Kathryn J. Gainey
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TESTIMONY OF DEREK TAYLOR

Derek Taylor is CN's Vice-President, Southern Region. In this role, Mr. Taylor is generally responsible for CN's operations in the United States, and he oversees CN's efforts in the United States to maintain network fluidity by, among other things, reducing cycle times for equipment and increasing asset utilization. Prior to beginning his current role in August 2018, Mr. Taylor served as General Manager in CN's US headquarters in Homewood, Illinois. Mr. Taylor joined CN in 2000 and has held positions ranging from Trainmaster to General Superintendent across CN's system in both the United States and Canada.

Mr. Taylor will testify about the importance of steadily pursuing efficient rail operations to maximize network fluidity under widely varying conditions, ranging from record-breaking cold temperatures to unprecedented flooding to searing heat. CN railroaders are dedicated to safe and efficient transportation to meet the needs of our rail customers by providing reliable service. Fluidity is particularly important to CN's U.S. operations, which are conducted on a largely single-track network. While one aspect of network fluidity involves trains operating consistently and on a schedule, it is equally important to maximize asset utilization of rail-owned cars and private cars on the rail network. This is particularly true during times of reduced capacity, such as the winter months or when maintenance and capital improvements require maintenance windows for work blocks, all of which require changes to operations. It is also true during times of congestion because such

congestion can cause ripple effects and require a railroad to stage trains in sidings miles away waiting for the congestion to clear.

At CN, we work hard to increase asset utilization by encouraging equipment to be loaded and unloaded more quickly. When cars cycle faster from origin to destination and back to the next origin, the same number of cars online can move more loads for rail, which translates into improved network fluidity by reducing delays from congestion of trains and cars in the network. CN is fostering resilience to respond more quickly to real-world disruptions in railroading.

CN engages with its customers on a regular basis to encourage their cooperation in facilitating a fluid, efficient rail network. The faster equipment is unloaded and released to CN, the faster that empty equipment can be returned to the system to serve another customer for loading. In that regard, an empty load is just as important as the load itself—an empty car is the next loaded car. By ensuring that those empty cars are returned to the system as soon as they are available, the entire supply chain benefits. When car cycle time is down, fewer cars online can serve demand, thereby alleviating congestion and increasing capacity.

One of the ways in which CN encourages efficient asset utilization and movement of cars is through demurrage. CN imposes demurrage charges when customers exceed the free time allotted for loading and unloading of rail cars. The purpose of demurrage charges is to incentivize customers and receivers to load and unload equipment quickly. Customers can make decisions to decrease their

demurrage charges by configuring their facilities to increase track capacity, improving loading or unloading times, or operating seven days a week.

CN prefers customers and receivers to load and unload equipment within free time rather than charging for demurrage. That would mean that CN's equipment was moving at maximum efficiency, to the benefit of all CN customers and receivers and the entire supply chain. Everyone benefits from moving freight more efficiently—not from collecting demurrage from cars that are not moving and dwelling in CN's rail yards, CN's sidings, or CN's tracks.

By encouraging efficient use of equipment, CN's policies promote commercial fairness to our customers. Cars that are occupying space in CN yards or tracks or awaiting unloading or loading at a customer facility make it harder for CN to provide fluid service and efficient asset distribution to other customers who are efficiently loading and unloading their cars. And the longer that a customer takes to unload a CN-provided railcar, the longer another customer has to wait for that equipment. Policies that encourage better asset utilization by penalizing delays are fairer to the many customers who do load and unload equipment efficiently. What would be commercially unfair would be to let a minority of customers, through their own commercial and operating decisions not to promote efficiency at their facility, degrade service to other customers and receivers in the broader rail network.

The Board has also asked about accessorial charges. In general, accessorial charges fall into two categories. Most accessorial charges are for a menu of optional services that customers can request that CN provide separate from rail linehaul

services. For example, some of the optional services CN offers include inspection services, private railcar storage where available, and additional switching within the gate. Many customers choose to perform this work themselves or to engage a designated agent to perform the services. Others customers prefer the convenience of CN providing the optional service as described in CN's tariffs.

Some other accessorial charges serve a penalty function similar to demurrage and are designed to discourage customers from engaging in unsafe practices. Safety is CN's core value. Accordingly, CN charges customers for unsafe practices such as tendering overloaded railcars or for the costs of securing railcars leaking hazardous materials or dangerous goods. These charges highlight the importance of safety and act as a deterrent to protect the safety of CN employees and adjacent communities near the rail line. The purpose of these charges is to encourage safe practices.

In conclusion, CN believes that its customers benefit from CN's approach to demurrage and accessorial charges, which are aimed at providing services CN's customers want and at encouraging asset utilization to promote CN's safe and efficient network.

TESTIMONY OF KEITH COURTOREILLE

Mr. Courtoreille is Senior Manager, Service Delivery, at CN. In this role, Mr. Courtoreille leads the Optional Services team that oversees the application of CN's demurrage and accessorial services tariffs. Mr. Courtoreille joined CN in 2006 and has served in a variety of roles, including Manager, Innovation and Strategy, Senior Manager, eBusiness Manager – Sales and Marketing, and Carload Service Delivery, Operations.

Mr. Courtoreille will testify about CN's efforts to be transparent when CN administers its Optional Services tariffs and CN's development of a customer-focused dispute resolution process. He will explain how CN's Optional Services team works carefully to ensure that invoices are correct. He will describe CN's published dispute resolution process, which provides parties responsible for demurrage or accessorial charges (such as customers or receivers) with a full opportunity to dispute charges that they believe to be incorrect. As a result of the process, CN works with customers to understand whether any adjustment to the invoice is appropriate, such as an issue with CN's service. As an example, CN customers can request an intraplant switch move online (wherein CN moves cars from one customer facility spot or track to another designated by the customer). If the actual work was performed but the car was placed in the wrong location, the customer can let us know, and we will correct the invoice.

While CN accepts responsibility where appropriate under the circumstances of a particular invoice if it is determined that a specific charge was improperly

assessed or CN was somehow responsible for the resulting charge, CN's expectation is that customers and receivers should accept responsibility and pay valid invoices.

CN develops tariffs that are intended to clearly explain the applicable charges and policies for demurrage and other optional services. The tariff changes are communicated directly via email to customers and receivers to ensure that they are notified well in advance of upcoming tariff changes. In addition, CN's tariffs are available on CN's website, and CN's eBusiness Price Documents tool give customers and receivers the ability to subscribe to CN tariffs to ensure they always have the latest tariff version. Each tariff version contains a summary page, at the end, that clearly identifies each change made in that particular version. In the event that CN becomes aware of customer or receiver confusion resulting from tariff language, the tariff language is reviewed, and CN may include clarifying language or offer specific examples to ensure tariffs are transparent and straightforward.

As CN explained in its May 1 response to the Board's data request, CN has a robust dispute resolution process that is designed to ensure that charges are fair and that customers and receivers have an opportunity to dispute charges if they have questions about a charge or believe a charge is incorrect.

Additionally, before most Optional Services are invoiced, they go through internal validation processes that include both system and manual processes to validate that the charges are accurate. For example, when railcar deliveries are delayed, CN personnel will review relevant information such as contemporaneous crew reports to determine whether demurrage charges are appropriate before

charges are invoiced to the customers or receivers. If CN personnel determine that the delay is attributable to CN, adjustments will be made for CN to take responsibility and reduce or cancel the invoice.

Optional Services invoices issued under CN's 9000 series tariff, including demurrage, are covered by CN's "18-15-15" billing guarantee. Under that process, CN commits to invoice customers or receivers within 18 business days of the service completion date or agreed billing period. If CN fails to meet that 18-day deadline, the customer or receiver does not have to pay the invoice. If the party responsible for the charges disputes the invoice in CN's eBill application within 15 business days, CN commits to respond to the dispute within 15 business days. If CN does not respond within 15-days, CN will accept the dispute. On some occasions, a dispute that a customer or receiver timely raises and to which CN timely responds may take some additional time to resolve. In all cases, CN works with its customers and receivers to resolve disputes amicably whenever possible. CN aims to resolve disputes with customers and receivers through this process, but this is not always possible.

While keeping the 18-15-15 guarantee requires constant effort from the Optional Services team to promptly issue invoices, investigate the circumstances underlying the service, and address customer or receiver disputes, CN views it as part of its commitment to provide timely and responsive billing to its customers and receivers. Because of the detailed process CN follows to ensure accuracy in its invoicing, it is imperative that customers and receivers do their part to promptly

dispute invoices by bringing any concerns to CN's attention with sufficient detail to allow CN to complete a thorough review.

In conclusion, CN has multiple levels of processes and people in place to help customers and receivers understand CN's demurrage and optional services policies, and to provide a fair and transparent process for customers and receivers to address any concerns they may have with invoices for these charges.