

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

COMMENTS OF THE
NORTH DAKOTA GRAIN DEALERS ASSOCIATION

Introduction

NDGDA is a 108-year old voluntary membership trade organization representing the interests of country grain elevators in North Dakota. These elevators are the primary point of sale for grain raised by North Dakota farmers. The elevators receive, clean, condition, segregate by quality, and ship these grains to domestic and international markets.

North Dakota is at the center of the North American continent, farther than any grain shipper from coastal ports and overseas markets. North Dakota has no navigable waterways that provide barge competition. For long distance movements of our commodities we are dependent on railroads.

This Association has been involved in many STB proceedings over the past 24 years and with the ICC before that. Items addressed include service, car supply, mergers, fuel surcharges, rates, common carrier obligation and other matters that sometimes become contentious between shippers and railroads. That is the background from which we offer the following comments.

Demurrage Not Reciprocal

Efficiency is emphasized in the current grain transportation environment and grain shipments move at a faster rate today than at any time in history. Railroads insist demurrage is a necessary tool to ensure the efficiency and fluidity of their networks. Demurrage is charged when the origin or destination elevator does not perform within the timeframe specified by railroad tariff agreements. What about cost incurred by shippers when railroads don't perform? Where's the shipper's compensation?

The commercial grain industry in North Dakota has seen rapid change in the past 20 years. The number of elevators has declined by 15% while the average elevator capacity has more than doubled in that timeframe. This aligns with the shuttle loading concept which was introduced at the

beginning of that period. The industry invested hundreds of millions of dollars to increase capacity and upgrade equipment to the speeds necessary to load 100+ car shuttle trains. While single car and smaller units train shipments still exist, the majority of North Dakota's grain moves out of the state on shuttle shipments. Another result of the industry move toward shuttle shipments is the emergence of the Pacific Northwest (PNW) as the primary destination for North Dakota grain shipments. Nearly 50% of all of North Dakota's grain and oilseed production moves by rail to the PNW.

North Dakota elevators are serviced by two Class I railroads-Burlington Northern Santa Fe (BNSF) and Canadian Pacific Railway (CP). Differences in the service level between the two railroads has created a disparity in the market. CP shippers are experiencing bid discounts from PNW buyers ranging from five cents to .20 cents less per bushel than what is being offered to BNSF shippers. The reason given for the discount is the unreliability of CP performance and the greater chance that PNW exporters will have to pay demurrage on ship freight. Many CP shippers report having crews work nights and weekends loading cars to avoid demurrage charges only to see the loaded train sit for many days waiting to be pulled. If demurrage is a tool to ensure performance, perhaps the demurrage charges should be reciprocal and paid by railroads to shippers who pay the costs for the railroad's poor performance.

Accessorial Charges

Accessorial charges are a cost that is hard to measure for the shipper due to the lack of transparency in the calculation process. Shippers are billed for a myriad of items that are often charged without the shipper's knowledge or input, and which are no fault of the shipper. While these charges are outlined in tariff agreements, the justification or rules used to apply them to shippers is dubious at best and absurd at worst. The majority of complaints for these types of charges have come from shippers on the Canadian Pacific.

An example of these absurd charges is several CP origin elevators in North Dakota have reported being charged for hopper bottom gates being open on empty railcars during transit back to a loading origin. These situations occur because the gates were either left open by the destination or they have worked open during transit. In either case it is ridiculous to charge the origin shipper for a situation they have absolutely no control over.

Another common charge being reported by North Dakota grain shippers is for empty car orders that are can't to be spotted for loading because siding tracks are occupied by loaded cars. In most of those cases the loaded cars have been billed and should have been pulled, but the elevator

gets charged for the inaccessibility of those tracks. In essence, the railroad is charging the elevator for its own inability to perform.

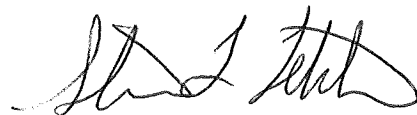
We have mentioned just a couple of charges ND shippers commonly are assessed. There are many more but in the interest of brevity we will mention only these examples as there is a bigger issue to address. It seems that many of these charges are assessed to shippers just because they can be and the shipper has limited options for recourse. CP's interaction and communication on these matters is very limited and the shipper often has no idea why he is being charged. As an example, one North Dakota CP shipper currently has over \$44,000 in accessorial charges that he has disputed. The railroad calls these charges "defendable" and is pressing the shipper for payment. Many North Dakota shippers have a similar story to tell regarding accessorial charges and the CP classifying these charges as "defendable" is telling. It implies that these charges are unwarranted and the reason for assessing them is not to improve performance or efficiency, but to simply generate revenue.

Conclusion

The North Dakota Grain Dealers Association believes that an efficient and competitive transportation system is vital to North Dakota agriculture. But the current transportation environment can hardly be described as efficient and competitive, especially on the CP. Revising the rules for demurrage to allow shippers reciprocal charges from non-performing railroads will have the effect of improving the efficiency and competitiveness of all railroads.

We feel transparency, reasonableness and accountability should be the foundation for any accessorial charge rule changes. These charges should be used for their original purpose of improving performance and efficiency, not as revenue generating tool.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stuart L. Letcher', written in a cursive style.

Stuart L. Letcher, Executive Vice President
North Dakota Grain Dealers Association
2417 University Dr. N., Ste A
Fargo, ND 58102