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Surface Transportation Board
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RE: Docket No. EP 754
Oversight Hearing on Demurrage and Accessorial Charges
Testimony from National Customs Brokers and Forwarders of America Association (NCBFAA)

Dear Surface Transportation Board:

My name is Richard J. Roche and I serve as the NVOCC Sub-Committee Chair under the Transportation Committee of the National Customs Brokers and Forwarders Association of America (NCBFAA). Our organization is made up of over 1,000 Customs Brokerage and International Freight Forwarding firms who are duly licensed and/or bonded by US Customs and Border Protection (CBP) and / or the Federal Maritime Commission (FMC), and who are involved in handling the great majority of the international shipments of cargo that are exported out of or imported into the United States. In that regard, our member firms are responsible for making customs entry for import cargo and/or providing transportation services for international import and export cargo moving to or from every corner of the world. We move air freight and ocean freight across all modes including by ocean-going vessel, feeder vessel, barge, rail, and truck. Like all the member firms I represent through my position at NCBFAA, I am deeply engaged in arranging intermodal transportation, and accordingly am very familiar with railroad practices and their customary charges, and lately the unfortunate abuse of such charges. My purpose in testifying in this investigation is to offer some insight to the new trends we are seeing that result in charges that are excessive, patently unfair, and discriminatory in nature.

I would like to begin by explaining a little bit about what we do. As freight arrangers, an NVOCC (Non-Vessel-Operating Common Carrier) may string together services from multiple providers to keep cargo moving from end to end through the intermodal network. We may have our own offices or agents at any given location around the globe to accept bookings that are generated by our import customers here in the United States. We might be asked for instance to arrange container pick-up by truck at a factory in China. We might then tender the container to a barge facility that brings it downriver to the seaport where it is loaded on an ocean-going vessel. We may determine which port to send it to in the U.S., and depending upon final destination, we may arrange to have it railed to an interior point, and/or ultimately trucked to final destination. We buy these services from the actual carriers and incorporate them into our own House Bill of Lading on a door to door, door to port, port

to door basis. By issuing house bills of lading, NVOCCs are regarded by law as common carriers and are responsible to their customers to provide and complete all of the transportation necessary to effect the through-delivery of cargo. This string of services to which we contract is all worked out beforehand, and pricing is filed in our tariffs (or other pricing mechanisms allowed by the FMC) that in conjunction with our Bill of Lading are essentially our contractual agreements with our clients.

We may purchase the different legs of the voyage a la carte or buy them already bundled. For example, the ocean carrier has the ability to offer door services on either end, so we may choose to buy door service on one end, but buy delivery services from a different carrier on the other end, still maintaining a door to door contract of carriage under our House Bill of Lading. Regardless of how the deliveries are provided, NVOCCs almost always contract with the ocean carriers to provide delivery, for example, from various foreign ports to inland US rail ramps on import cargo (and the reverse is true on export cargo). In this context, the ocean carrier issues a Master Bill of Lading in favor of the NVOCC from that origin port to the US inland ramp, although we may still issue a door to door House Bill of lading covering door pick-up and final delivery for complete door to door service. We would use our own truckers to fill in the gaps where we do not buy those legs from the ocean carrier as bundled service.

As Customs Brokers, we may not be involved in the transportation of cargo to the U.S. but will take over once it arrives. We might make entry at the seaport or arrange to move the cargo in bond. We may issue final delivery advices from seaport to door, or rail ramp to door. But, in most cases the cargo will not move unless the broker issues a delivery order or delivery advice that provides the ultimate destination delivery information. In all cases, whether we are acting as an NVOCC or as a customs broker, it is this pick-up from the railroad where we have lately been running into significant, unprecedented demurrage problems.

Purchasing intermodal rail transportation through the ocean carrier is quite common in our business due to the relative volumes the ocean carriers have with the railroads, making any rates or service we could buy from the railroad directly pale in comparison. That is why most intermodal rail service for international shipments is purchased either directly by the ocean carriers and resold to importers, exporters, and NVOCCs like us.

Last year, with the proposed increases in the duty tariffs, we saw an extended peak or busy season continue right up to the announced tariff implementation date of January 1, 2019. This certainly put pressure on the system to deliver all the containers in advance of that date to avoid the 25% duty increases. It is around this time that we began to see long delays based on congestion along with an increase in the amount of demurrage charges assessed. Some areas of the country were hit harder than others. We are prepared to offer some examples to outline the trends we have witnessed.

Free time at the rail terminals is much more restrictive than ocean terminals. On average, free time at ocean terminals is four days where weekends and holidays do not count. The rail terminals however have a variety of schedules offering as little as the day of notification of availability plus 24 hours (BNSF) to a maximum of the day of notification of availability plus 2 days (CSX), with weekends and holidays counting (although some carriers except Sundays). Some rail tariffs even count holidays against the allowable free time regardless of whether they have gate hours that day or not.

Clearly, there are times when congestion at rail yards will make it difficult to pick up or deliver containers within the available free time. However, the railroads often contribute to the problem by not taking steps to facilitate the movement of cargo into and out of their yards. In that respect, many of the

railroads have entered into exclusive leases with various chassis providers that preclude us or the various truckers from bringing in a non-favored chassis in order to pick-up or drop off a container. That is the case whether or not there is an available chassis at the rail yard for us to use. Consequently, without a chassis, we cannot move a container.

When January 1 hit, we experienced the perfect storm of demurrage charges in a few places. We would like to outline how some of these played out:

Example 1: Mohawk Global Logistics, Chicago, IL

Two containers owned by ONE arrived at Union Pacific in Chicago on Jan 7.
ONE notified Mohawk that containers had arrived and available with Last free day: Jan 9
Containers were free and clear with no Customs hold and freight was paid
Railroad advised that no chassis was available; however, UP does not permit the use of outside chassis even if there are no UP sponsored chasses available
Notice of Availability issued again by ONE: Jan 29
Picked Up: Jan 29
Total delay: 22 days in Chicago
Demurrage Paid to UP on Jan 29 in order to gain release: \$ 2000 each container, total \$ 4000

Example 2: Mohawk Global Logistics, Syracuse, NY

Container owned by APL arrived at Union Pacific in Marion (Memphis) on Jan 1
APL notified Mohawk container had arrived and available with Last free day: Jan 4
Containers free and clear with no Customs hold and freight was paid
Containers sent to storage by UP - no chassis available – again, UP does not permit the use of outside chassis
Service Issue No. 91332 filed complaint with UP on Jan 11
Service Issue Response on Jan 13: *"Good morning, due to UP Policy change, we are unable to cherry pick units located in the stacks. As the chassis pool provider supplies chassis to the ramp, units will be mated and re notified. We have been instructed not to waive storage as this is an issue due to lack of chassis provided by the private chassis pool provider. Please refer to the notice that was sent out to steamship lines:*
<https://www.up.com/customers/announcements/intermodal/allintermodal/IM2019-8.html>. *If you have further questions on the policy change please contact your Marketing and Sales Rep. Thank you."*
Notice of Availability again issued by APL: Jan 24
Picked up: Jan 24
Total Delay: 24 days in Marion
Demurrage Paid to UP on Jan 24 in order to gain release: \$ 1900

Example 3: W.E.S.T Forwarding Services, Bensenville, IL

Container NO. TCLU4519883
ONE container arrived Union Pacific Global 4 (Chicago) on 01/07/19
Last free day at Union Pacific advised to be 1/9/19
Container was fully released and freight charges/BL release clear in advance

Advised no chassis available and no outside chassis permitted to be used (our trucker had one available, but this option was refused)

Notice of availability 01/24/19 (on chassis and ready) Picked up 01/24/19

Total Delay: 17 days

Demurrage paid to UP in order to pick up container on 01/24/19: \$1500

Example 4: Coppersmith Global Logistics, Atlanta, GA

Container Nos. CMAU7354335 & CMAU7747986:

Containers arrived at ramp in Memphis on 1/2/19

Last free day: 1/4/19

Containers were not mounted to chassis and both were stacked against the "wall" and not made available until the end of the month. CMAU7747986 was available 1/24/19 and we had to pay rail storage of \$3500. CMAU7354335 was available a day or so earlier and the amount of rail storage paid was \$3125. The rail holds us completely at hostage in these situations - they will not even speak to us about waiving charges. We even attempted pickup with the trucker's chassis, but were not allowed because the containers were buried in the stacks against the wall at the UP.

The following containers also arrived at Memphis (Union Pacific Rail) in January. These containers were also all "buried" against the wall in Memphis:

TGHU8831760 - paid \$2900 rail storage

CAIU9705740 - paid \$3100 rail storage

TLLU4562511 - paid \$3100 rail storage

TLLU4566543 - paid \$2900 rail storage

Example 5: E. Besler & Co, Chicago, IL

5 Evergreen containers arrived at Union Pacific Chicago on 12/26.

2 containers went to "stack" due to no Chassis. Both showing a Last Free day of Jan 4

1 container became available Jan 7, (LTIU801164) \$300 storage to recover

2nd container was notified as available on Jan 7(EISU943589) \$300 storage to recover, however when driver arrived this container was still in "stack". Container became available Jan 27, notification of availability was Feb 01, additional \$800.00 storage to recover.

31 day delay, significant penalties incurred by the Importer for late delivery.

Example 6: E. Besler & Co, Chicago, IL

Evergreen container GESU635062 arrived with a last free day of Jan 26 (Saturday).

Driver attempted pick-up and was refused due to a "Gate Hold".

After re-assurance the correct pick up number was being used, a second attempt was made and the driver was again refused. Resolution between the BNSF and Evergreen occurred Feb 1 with no clear outcome as to who was at fault.

\$300 in Demurrage

\$600 in Bobtail dry run fees from the trucker.

There is clear evidence the situation is progressively getting worse. Having our primary business centered around in-bond cargo moving via rail to the Midwest we have seen a 220% increase in the amount of demurrage paid while the number of containers incurring storage increased 29% from 2015 to 2018. This lends itself to being more of a punitive situation rather than incentivized. The situation as it has gotten worse, has created accessorial costs to the cargo owner. Waiting time at rails has now become the norm where it did not exist in the past. There are some occasions where truckers will impose a surcharge on top of waiting time just to go into a particular rail. Others have flat out refused new business if it is from a particular rail. The loss of productivity in doing our job as a Customs Broker to drop everything to guarantee storage is another intangible cost of demurrage.

Example 7: M.E. Dey & Co., Chicago, IL

ACL door Delivery

Our Delivery Advice - SMKEI0051042 - PQ - AVENEL NJ - ACLUSA00323980

Our Delivery Order sent 12/18

The cargo arrived on 12/31

ACL could not get this delivered in the following 3 weeks creating over \$ 1000 in storage

On January 14, ACL says *"Due to Major Congestion which is beyond trucker and ACL's control, the container will not deliver until Tuesday. Storage will have to be guaranteed through Tuesday the 16th".*

On January 15, we get email from ACL they can't find trucker to do door delivery. They advise *"You have your choice of changing to a port move or pay storage until we have one that is available to pick up"*

We changed to terminal move and we, as broker, were able to find trucker. We paid \$1570 in storage at rail. ACL assumed no responsibility for storage or for additional delivery fees.

Example 8: M.E. Dey & Co., Chicago, IL

Container arrived at Union Pacific in Chicago on 06/27/2018 Last Free day at the rail:

06/29/2018 Container free and clear with no customs hold and freight paid

Our trucker went to recover the container and was advised by UP Driver Assist, that they could not locate the container: 06/29/2018

Container located: 07/03/2018

Container picked up: 07/04/2018 but UP did not adjust last free day claiming 5 days of storage owed.

Demurrage paid to UP in order to recover container: \$800

Spent 4 months emailing and calling both steam ship line and the rail, trying to get reimbursed. My attempts were unsuccessful.

We have further examples of how a small delay in the communication process between parties results in additional fees to us. When the railroad notifies the ocean carrier that containers have arrived, if there is even a slight lag in time before the ocean carrier processes that information and turns it back around

to us, there may be a difference in what the ocean carrier calculates and notifies as last free day and what the actual last day is according to the rail. This misinformation frequently results in an additional day of demurrage charged to us if we are going by the "incorrect" last free day.

Summing up:

As a large organization comprised of over 1000 member companies, we could potentially flood you with examples like this. Instead, we have limited our response to these few examples in order to illustrate how patently unfair these charges are.

We agree that demurrage is a charge designed to incentive cargo owners to remove their containers from rail terminals within the prescribed free time. Having said that, the NVOCC and Customs Broker industries do not want our containers to be delayed any more than we want to be charged demurrage that can wipe out our margins in a single day of charges. We recognize the punitive aspect of demurrage especially when charged on an escalating scale increasing over time. The truth is however in these examples, we could not be incentivized to pick up the containers any sooner than we did because the railroad did not make containers available to us to remove from their terminals.

Moreover, having been in this business for more than three decades, I am simply not aware of many examples where our customers prefer not to receive inbound loaded containers as soon as possible. Typically, they have paid for the goods well in advance and have also paid any customs duties that are applicable. In my experience, the consignees for these import containers want their goods as soon as possible, so have little need to be incentivized to keep the cargo moving to final destination.

The problems encountered in our examples are due in large part to how the railroads choose to do business. Whether intentional or not, the railroads artificially limit the availability of chassis even while they are complaining that their rail yards are congested. When they claim to have inadequate supply, they put our containers into storage within their yards as they wait for chassis returns, all the while delaying our ability to pick up the containers and charging us for the inconvenience. It is unreasonable for the railroads to assess demurrage when they do not actually make our containers available and further cause the delays by not allowing us to bring in our own chassis fleet when there are none available at their yard.

The fact is we are not incentivized by the demurrage charges, and conversely, the railroads have little incentive to fix the problem while they remain able to collect penalty demurrage that unfairly compensates them. The ultimate question remains: how is it reasonable for the rail carriers to charge demurrage on containers they will not make available to us?

A few years ago, the Federal Maritime Commission did an extensive study on congestion issues at marine terminals that resulted in Fact Finding 28. This investigation, under the guidance and direction of Commissioner Rebecca Dye looked at detention, demurrage and per diem practices of marine terminals and the ocean carriers who use them. The final report issued by Commissioner Dye focused among other things on notice of cargo availability and dispute resolution processes and procedures. There are distinct parallels between the FMC investigation and this hearing on the railroads.

In our examples, the Forwarder and Customs Broker communities are buying the railroad services at arm's length from the same Ocean Carriers we use into the ocean terminals. The rail service is a natural

extension of the ocean bill of lading. It therefore would make sense that the practices become somewhat more aligned. Much like the findings on the marine side, the notification process, billing issues, and dispute resolution are somewhat complex, and may vary greatly from one railroad, terminal, or ocean carrier customer to another. It is within these complexities where the Forwarder, Customs Broker, and effectively the end-user clients have very little voice. While it is understandable that the ultra-large retailers and manufacturers may get some special treatment, they too fall victim to some of these unfair practices. When we appeal to the railroads that we are being unfairly assessed punitive charges for problems outside our control, they tell us to take it up with the ocean carriers. We get no resolution from the ocean carriers because they tell us these are rail fees. Either way, it is cash on the barrel before we can remove the containers from the rail, and if we try to argue the facts, even more charges will accrue for every day we do not pay. This is a discriminatory practice, where we have no seat at the bargaining table, and no clearly defined process for resolution.

Commissioner Dye has spoken about adoption of reasonable practices in the application of detention and demurrage charges particularly as regards issuing notices of arrival or availability. In the examples we gave, the ocean carrier issues the arrival notice even when the containers are not necessarily available based on the information they receive from the railroad. The trucker may find out when they get to the terminal that the container is lost, grounded or otherwise not available which starts the waiting game. When the updated arrival notice does come, you will see from our examples we rush to get the container mostly on the same day. We are not only trying to satisfy our customers who have been waiting patiently for their cargo, but we are also trying to stop the demurrage clock which continues to tick every day, over weekends and holidays, even when the terminal is not open, for a container that sat beyond its scheduled free time due to reasons we had no influence or control over. That is not a reasonable practice by anyone's definition, and a practice that needs to change.

We are not suggesting that demurrage be eliminated. To the contrary, we understand there is limited space in the rail yard and the need to remove containers in a timely fashion. We want those containers. It is in those circumstances where the containers cannot be produced within the allowed free time, that we recommend free time extension be granted until such time that the container can be produced. Assessment of demurrage charges under those circumstances is not particularly reasonable.

Respectfully submitted,



Richard J. Roche

NVOCC Sub-Committee Chair
Transportation Committee
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