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The Honorable Ann D. Begeman, Chairman  
Surface Transportation Board  
395 E. St., SW  
Washington, DC 20423-0001

**RE: Written Testimony for EP-75: Oversight Hearing on Demurrage and Accessorial Charges on May 22, 2019**

Dear Chairman Begeman:

I would like to offer my sincere gratitude for taking the time to hear from the third-party warehouse industry on the challenges faced by unreasonable demurrage practices. These challenges are significant and jeopardize our ability to continue to provide services to rail shippers.

My company, Palmer Logistics, is a third-party warehouse that handles railcar traffic on behalf of our customers (rail shippers). These customers include the US Government (USDA/USAID), BASF Corporation, Covestro LLC, Pacific Coast Producers, Stanislaus Foods, and Goya Foods. On an annual basis, we load approximately 300 boxcars and receive approximately 600 boxcars. In all cases, Palmer Logistics does not control the railcars shipped to our site. Control of railcars are done solely at the discretion of our customers or their suppliers (the rail shippers). Palmer Logistics is governed by Track Agreements that the railroads impose upon Palmer Logistics with limited, to no, ability to negotiate. In some cases, we inherit the Track Agreement that was negotiated between the railroad and the institutional landlord when we lease a new facility.

Since Palmer Logistics is not the Shipper, Palmer Logistics has extremely limited influence with the respective railroads that serve our warehouse facilities.

Here is an example of what my company is facing:

At the end of 2017 we secured a contract with the US Government – USAID – to be the preposition warehouse to receive, store, and ship humanitarian food aid in support of US Government interests around the world. After racking up \$144,800 in demurrage charges from February – June 2018, we leased a new, dedicated facility on a 3-year lease agreement with over \$140,000 in capital upgrades on the rail, in order to better handle the higher volume of railcar volume. The initial rail agreement we received from Union Pacific, the delivering railroad, was 3 switches per week (Monday, Wednesday, Friday) with 10 railcars per switch. *Service Days were not negotiable.* Essentially, three service days was tendered by the Union Pacific as a “take it or leave it” proposition. This inadequate, very limited service, was all the Union Pacific was prepared to offer.

Palmer Logistics started receiving railcars in that month of June for normal pre-positioning as well as Yemeni emergency relief.

Over the next three months we experienced:

| Month       | Cars Received | Capacity | Switches Missed        | Demurrage Billed |
|-------------|---------------|----------|------------------------|------------------|
| June 2018   | 182           | 130      | 7 of 13 ( <b>54%</b> ) | \$332,900        |
| July 2018   | 14            | 130      | 3 of 13 ( <b>23%</b> ) | \$383,000        |
| August 2018 | 85            | 140      | 5 of 14 ( <b>36%</b> ) | \$38,700         |

The demurrage bills have since been reduced to \$242,800 which is the amount that UP indicates the bill would have been if they had actually switched per our track agreement, and we had released them within one day.

***This revised demurrage bill represents 61% of the revenue that Palmer Logistics received to unload the cars.***

### **What Palmer Logistics Finds Unreasonable**

Demurrage tariffs were originally written when railroads served industry tracks with daily switches. It is not fair and an unreasonable demurrage practice to limit switching activity (say to three days per week) in the name of rail efficiency, (PSR) but then charge the receiver for tying up the railcar asset on a daily basis (again in the name of rail efficiency) when the railroad refuses to offer additional switching with a Receiver's warranted volume.

The railroad can accept higher volumes from the shippers, in this case USDA Commodity suppliers, charge the shippers to get the material to Houston, but then limit delivery in Houston and charge the receiving site demurrage for not unloading the railcars fast enough.

The railroad can charge Palmer Logistics with a punitive demurrage tariff for inefficiency, yet what recourse does Palmer Logistics have when a railroad fails to perform per the siding agreement?

### **Between June – August 2018 UP missed 37.5% of Palmer Logistics' switches.**

That is 15 days where Palmer Logistics had a minimum of 12 employees scheduled to hand unload agricultural boxcars with 1800-3600 bags weighing 55-110 lbs each. When the railcars did not show up, Palmer Logistics still had to pay Palmer Logistics' employees and subcontractors causing a financial hardship. If Palmer Logistics had waited until the railcars actually showed up, Palmer Logistics unloading management would not have time to call workers in and unload in the 24-hour limit imposed by the railroad before demurrage starts to accrue.

The railroad charges demurrage based on their system that is not in sync with their operational system. After bringing up the fact that they missed 15 switches they reduced the demurrage bills at our facility by 68%, from \$754,600 to \$242,800. The railroad should have a requirement to validate any demurrage bills they issue based on their operational performance vis-à-vis the track agreement.

The railroad unreasonably billed demurrage to Palmer Logistics for extraneous demurrage events that Palmer Logistics has absolutely no control over.

Recently a Shipper, that is not a customer of Palmer Logistics, inadvertently way billed 3 railcars to Palmer Logistics' track. BNSF expects Palmer Logistics to pay the demurrage and rebill a company to whom Palmer Logistics has absolutely no contractual relationship with.

If railcars are "bunched", or a derailment causes a backlog of railcars, there is no mechanism today to limit the railroad from billing demurrage under situations where they may have been the sole culprit for the cause of the demurrage.

I want to personally thank you, and the STB Board members, for holding this hearing. I am confident that if this issue is approached reasonably, and if the STB adopts standards that are commercially fair for all parties, the chronic demurrage issues can be minimized, Public Interest will be served, and the relationship between Railroads and Receivers be one of reciprocity.

I thank you for your service and your understanding.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Mears", with a stylized flourish at the end.

Brett M. Mears  
President  
Palmer Logistics

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