

Private Railcar Food and Beverage Association, Inc.

247867

Before the Service Transportation Board

ENTERED
Office of Proceedings
June 6, 2019
Part of
Public Record

Docket No. EP 754

Oversight Hearing on Demurrage and Accessorial Charges

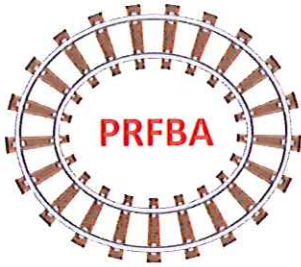
Supplemental Testimony to May 22nd and 23rd, 2019 Hearing

The following is the supplemental testimony from the Private Railcar Food and Beverage Association (PRFBA) with regard to both our written and oral testimony presented to the STB on May 22nd, 2019.

First, I would like to thank Chairman Begeman, Vice Chairman Fuchs and Commissioner Oberman for requesting this Hearing. PRFBA looks forward to your findings and recommendations, as a result, of the two-day hearing process.

It was apparent during the STB Hearing that the Board is trying to define “reasonable practices” and “reasonable demurrage and accessorial charges” within the railroad industry. On behalf of PRFBA, I would like to submit the following observations from our two days of listening to testimony, as well as, subsequent discussions with PRFBA members after the hearing.

1. New tariffs and lead time for the implementation of new tariffs and updates to current tariff charges and rules.



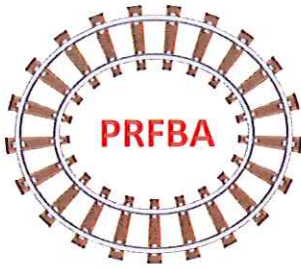
Private Railcar Food and Beverage Association, Inc.

Since the railroads are regulated by the STB, we believe it is reasonable to require the railroads to submit any new tariff charges, updated charges or new rules through the STB for vetting and approval prior to the tariff being publicly announced and implemented by the railroads. It was clear from the shipper testimonies that many believe the railroads are using assessorial charges as an additional revenue source, specifically allowing them to get around any rate limitations or reforms. PRFBA's suggestion would be, that prior to the introduction of new tariffs, tariff changes or rule changes, the railroad must obtain Board approval. And only after Board approval. And only after Board approval, then the railroad would be required to notify the shipping community with ample notice. The notification time-period by the railroad to the shipping community would be tied to the severity of the charge or change and how it would impact the rail shipping community overall. This would be set by the STB.

2. Free Time, Credit Days and Timing for Starting the Demurrage and/or Accessorial Clock.

In our opinion, the reasonable expectation is that a shipper/receiver should be provided with at least 48 hours of free time by the railroad.

There was much discussion about the "24-hour clock", when the railroads provide notice and when the railroad switch actually takes place. There is a lot of ambiguity around switch timing, constructively placed timing and when the cars are actually spotted at the shipper/receiver's facility. Many testimonies stated, that even when things are running perfect, with a zero free time practice, they are already on "the clock" for charges when the cars arrive at their facility. We know that it is "unreasonable" to expect railroad notification, switching and placement to be perfect. Therefore, the first 24 hours of any detention and demurrage should be absolutely-free, to account for railroad

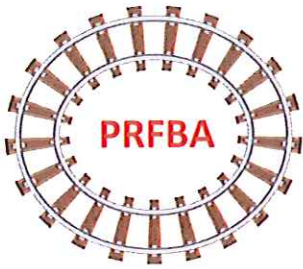


Private Railcar Food and Beverage Association, Inc.

challenges and timing. Having said that, a shipper/receiver should be allowed a “reasonable amount of time” to load/unload a car once it is placed. Therefore, it is PRFBA’s position that a “reasonable practice” is a minimum of 48 hours. Furthermore, should there be a service issue, on the fault of the railroad, and this service issue, such as bunching or “train building”, impacts the shipper/receiver then detention and demurrage charges on those cars involved should be completely waived.

Additionally, PRFBA believes private railcars should be treated differently than railroad system/owned equipment. The term reasonable, would indicate a practice that makes sense or would have similar practices in other industries. No other industry charges a usage fee or rent on an “asset” that they do not own. Moreover, a private railcar as stated in our testimony, has a significant daily cost to the car lessee /owner. The car lessees / owners do not need any further motivation to move their own private equipment. If detention is, in fact, a tool for the railroads to keep cars moving, it is a tool they do not need for private car owners. As testified, should a private car lessee / owner make a choice to use his railcars as storage, the railroad has a tool known as, “embargo”, to prevent a shipper from abusing railroad owned tracks. The “reasonable practice” for private cars should be “zero railroad charges” applied for load or unload time.

Additionally, as testified, the private car lessees / owners should have a mechanism to charge back the railroads should a railroad hold up a private car in transit beyond its published schedules. This should be considered a “reasonable practice” as the car lessee / owner is seeking recovery of costs associated with the delay of their assets.



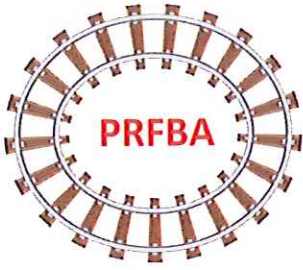
Private Railcar Food and Beverage Association, Inc.

3a. Docket EP 707 – Demurrage Liability

We heard many receivers complain about being billed for detention when they had “no ability to control” railcar flow in or out of their facilities. It is a “reasonable practice” that detention and demurrage charges be sent to the party that may be abusing the process, in order, to change behaviors. However, in the case of a receiver who doesn’t control the inbound flow of cars, they are clearly not that party. I think it would be “reasonable” to revise EP 707 to allow detention demurrage charges to be sent to the shipper of goods and/or the receiving party, or whoever is the freight payer. It is “unreasonable” to expect two business parties (for example, the receiving warehouse and railroad) that do not have a commercial relationship, to be engaged in a billing, invoicing dispute resolution process, when there is no commercial framework established for that relationship. A commercial contract between two interested parties should include how charges would be applied and how dispute resolution would be managed and resolved. Therefore, it is our suggestion, that railroad bill demurrage and accessorial charges to the party they have a commercial relationship with, “the freight payor”.

3b. Dispute Resolution

The “billing party” should be responsible for validating or substantiating the charges they send to their customer, a “reasonable practice”. Railroads sending detention and demurrage bills under the pretense that “is up to the receiver of the bills to gather all the information required to dispute bills” does not seem to be a “reasonable” or logical practice.



Private Railcar Food and Beverage Association, Inc.

4. US Highway Infrastructure

It is not "reasonable", efficient or environmentally appropriate for the railroads to push more freight onto the highway, so they can simply improve their operating margins. It is equally "unreasonable" to expect the US Taxpayers to shoulder the full burden of the infrastructure bill, because more freight is being rejected by the railroads and pushed to truck. Over the road trucks have a greater impact on infrastructure, from a maintenance and congestion perspective, than automobiles.

It would be "reasonable" and fair to incent the railroads to "grow" their business and help the highway infrastructure by getting more trucks off the road. Therefore, it would be "reasonable" for the Board to consider a fine/penalty system that penalizes the railroads for not growing their business in "net annual tonnage" year over year and fine those railroads that fail to meet that goal. The revenue from those fines would then be applied to the infrastructure budget.

We thank for the Board for their time, interest and commitment to reviewing all the testimonies and comments and we look forward to your findings and feedback on this very important issue.

Respectfully submitted,

Herman J. Haksteen
President, PRFBA
Board of Directors, Ex-Officio