



# **SAN JOSE DISTRIBUTION SERVICES**

April 18, 2019

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Honorable Chairman Ann Begeman  
Honorable Vice Chairman Patrick Fuchs  
Honorable Board Member Marty Oberman  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

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Dear Honorable Chairman Ann Begeman, Vice Chairman Patrick Fuchs,  
Honorable Board Member Marty Oberman,

First and foremost, I would like to sincerely thank the Board for taking a genuine interest in investigating unreasonable demurrage practices.

49 USC 10746, the law that was created to promote a nationwide need for sufficient rail car supply by affording railroads the capability to invoice demurrage charges, is being abused by the railroads to the point that 3PL's, in many instances, will pay more in demurrage charges than revenue generated from loading – unloading. 3PL's eventually will have to equate the merits of rail transportation.

If the demurrage situation continues to be unbridled, many 3PL's may be forced to abandon rail business altogether.

The railroads for *decades*, even before the Staggers Act was enacted, have customarily allowed forty-eight hours to unload rail cars. Now, Class Ones, for their sole benefit only, have arbitrarily reduced unloading free time from forty – eight hours to twenty-four hours. Class Ones claim reduction in free time is to create car fluidity and will benefit all spectrums of the Shipping Community. But the benefit claim is far from the truth.

There is no benefit to the Shipping Community.

The reduction of free time has only benefited the railroads accessorial coffers by making it much easier to invoice demurrage charges.

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If an Industry has a large track capacity, or handles commodities that cannot be unloaded within twenty-four hours, demurrage is being assessed and invoiced to 3PL's *that never had demurrage issues before*.

The way a railroad interchanges with another railroad, deliberate car bunching, building longer trains, consolidating or eliminating serving yards, furloughing employees, putting locomotives and railcars in storage, all attributes of Precision Scheduled Railroading, directly influence demurrage charges. The railroads are driven to reduce operating ratios and increase profits. Generating more demurrage charge dollars is adding to their already excessive profit bottom line.

Arbitrarily reducing service days, force switching on weekends when an Industry is not operable, missing switches, leaving cars in the yard that could have been added to a local service train, and sending CP Notifications at night, are other drivers of demurrage charges and becoming increasingly burdensome to challenge.

In addition, the one sided tariff revisions that are now becoming more frequent, are designed specifically to make demurrage charges rebuttals more challenging and oppressive.

Railroads have a Common Carrier Obligation to provide adequate service levels, but because of deregulation, monopolization and lack of oversee, 3PL's are literally at the mercy of one -sided revised demurrage tariffs and erratic railroad operations.

The railroad's billing mechanism for decades has been predicated on their tariffs. But railroad tariffs are antiquated and not in step with today's railroad operations. Extraneous railroad operating events that fall outside a railroad's tariff item rules, are totally ignored by the railroads, but are root causes of demurrage charges.

Here is a good example.

In December of 2017, San Jose Distribution Services accrued \$7,000 of illicit demurrage charges and was invoiced by the Union Pacific. But the demurrage charges were caused solely by the UP System's failure to put

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cars on Constructive Placement, not San Jose Distribution Service's purposeful delay of cars.

If the cars remain in Serving Yard Arrival Status (AR) in the UP System, cars cannot be ordered in.

San Jose Distribution Services filed Service Issues in very early December of 2017, alerting the railroad about UP System Failure. *But the complaints were totally ignored.*

Because the UP Chargeable Events System can only track car events as they happen, cars that were not going into Constructive Placement status, could not be ordered in, causing demurrage charges to be assessed.

San Jose Distribution Services declined all demurrage charges on the basis that the demurrage charges were not enforceable because the charges were solely attributable to circumstances extraneous of UP Tariff 6004-C's Demurrage Tariff Rules.

Had Union Pacific investigated "the why now demurrage charges" they would have discovered that San Jose Distribution Services was averaging around seven thousand dollars a month in demurrage credits. Furthermore, had the Union Pacific exercised due diligence, the Union Pacific would have discovered that San Jose Distribution Services had no history of demurrage charges.

Railroads do not feel it is incumbent or an obligation to investigate a sudden change in demurrage behavior. It is totally unreasonable for a railroad not investigate a sudden change in accelerated demurrage charges. Railroads do not question demurrage charges, even precariously eye brow raising ones, simply because it is an accessorial revenue stream.

After several railroad collection attempts, two very notable collection company threats, then rapid collection company withdrawals, San Jose Distribution Services demanded cancellation of the demurrage charges under Item 9850, UP Tariff 6004- C. Item 9850 in UP Tariff 6004-C states the railroad must waive demurrage charges that are incorrectly charged.

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It was only after this "demand" that the railroad withdrew the demurrage charges.

*It took over a year* and many hours of drafting technical correspondences to settle this matter.

Demurrage Tariff Item Rules Revisions changes are never open to deliberation or dialogue with Shippers, Receivers, 3PL's that are adversely affected by such changes. The railroads simply don't care about Public Interest, Commercial Fairness, Reciprocity. They only care about generating profits.

The Shipping Community at large has to be hopeful that the Board comes to the realization that unreasonable demurrage practices are rampant, businesses will continue to be impacted, the railroads simply cannot continue to be allowed to blatantly abuse 49 USC 10746.

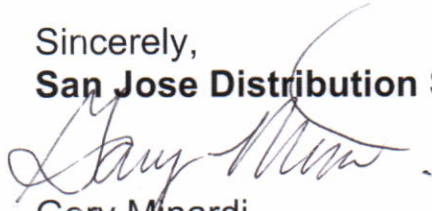
If the Surface Transportation Board would consider Rule Making based on the attached revisions to the Code of Federal Regulations Demurrage Definitions, these rampant demurrage charge abuses will cease. These changes are within the scope of commercial fairness and reciprocity.

But the railroads will oppose any commercial fairness and reciprocity simply because it will not benefit their accessorial coffers which has become an easy revenue stream for them.

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Thank you for your consideration.

Sincerely,  
**San Jose Distribution Services Inc.**



Gary Minardi  
President

Cc. Attachments

*Warehousing and Distribution Services Since 1956*

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#### 49 CFR 1333.1

“Demurrage” is a charge that both compensates rail carriers for the expenses incurred when rail cars are detained beyond a specified period of time (i.e., free time) for loading or unloading **after actual car placement at an Shipper’s or Receiver’s industry** and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network.

#### 49CFR 1333.3

Any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the **railroad’s reasonable** period of free time **set forth in the governing demurrage tariff after actual car placement at the industry’s track** may be held liable for demurrage if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars. The notice required by this section shall be in written or electronic form and **any person receiving cars should do so in a manner to meet their service days track capacity.**