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From: Larry Berkowski, President & CEO, Brunk Plastic Services

Regarding: Request for 15 min to speak regarding our complaint about NS tariffs at the May 22 Oversight Hearing on Demurrage and Accessorial Charges

Brunk's complaint with the NS is with their new storage and "customer caused congestion" (CCC) tariffs brought about by their Precision Scheduled Railroading or PSR strategy. We believe they were unreasonable in the time they gave us to find new storage track (only 45 days essentially) and the cost of both the storage (\$60/day/railcar) and CCC (\$100/day/railcar) tariffs is exceedingly high. Also, there is no leeway regarding the number of railcars or number of days before the tariffs begin considering the size of our operation (126 railcar spots). In addition, we were told verbally, in writing and in a voicemail by an NS salesman in early December and reiterated in late December and early February of 2019, that if Brunk put a "solid" plan in place to address the railcar storage issue at the NS Elkhart Yard, that their management would consider a delay in the implementation date or forgive any invoices in the period of the delay. NS was not only informed about our plan, but even they agree it has been unquestionably successful though not fully until March 1, 2019 or two months past the January 1, 2019 implementation date. They have invoiced Brunk \$77,000 of primarily CCC charges which is a major financial strain on a company our size. Ironically, we were told by NS personnel on several occasions that the high tariffs were "not about the money" but rather a "motivation" (a "stick") to get us to empty their yard (their "carrot") of our customer's railcars (which we undoubtedly have). As a service provider for both plastic producers and plastic molders, Brunk is just a consignee in this process. We are not the customer of the shipper. Our business model is simply to toll pulverize plastic resin and transload plastic pellets for our customers, who are supplied their plastic resin by the shippers (companies like Dow and Exxon). We cannot absorb these levels of tariffs nor is it commensurate with what we are able to charge for railcar storage in the servicing of our customers.

Here is the backstory:

- NS sent Brunk and other companies a "Dear John" email in early October with information on the unreasonable and complicated tariffs – without ANY direct and personal follow up until mid-November. Those same tariffs were around for years but NEVER enforced so we assumed that NS didn't really want or need to enforce them since they were so profitable already with the 600 cars they deliver to Brunk every year.
- Even though over 600 railcars a year are shipped to Brunk for processing from the NS Elkhart hump yard, there was no personal follow up until BRUNK requested a meeting at the end of October for an explanation of what the email meant.
- It took two weeks after we contacted the NS for their salesman to even visit us to explain what was going on.
- At that mid-November meeting, NS had no definitive solutions for our storage issue. It took another week for them to propose 4 options which Brunk had to vet.

- Yet two of the solutions were not viable and NS should have known this as valuable time was wasted.
- Two of the options were good, with one clearly better than the other. Of the two, the best storage solution on the Grand Elk RR in Bristol, IN would have taken 6 months to implement and we didn't have the time. Ironically, the Grand Elk is serviced by both CSX and NS and would have been better for our customers. Brunk is serviced only by NS.
- It took Brunk over a month before, during and after the Christmas holidays to negotiate a 3-year storage lease with the Elkhart & Western RR (EWR) which wasn't signed until early January. We had to do our due diligence since we were in uncharted territory and we could not afford to sign a bad deal.
- It took another month for the EWR to excavate and build a road for our trucks to access the railcars for our transload business, including a lost week to bad weather in January.
- Ironically, the short line RR EWR leases their track from the NS so it's unfathomable we were not told this in October (or even earlier) that we should be negotiating with them or even the Grand Elk. Why didn't NS inform us in January of 2018 that we had 1 year to resolve our storage issue before the tariffs would go into effect? Was it pressure from Wall Street and the "success" of PSR by the CSX? NS has stated in the press that they have a target of 2021 to implement PSR to get their costs down...yet they gave us 3 months?
- Had NS told us either in the October letter or the first face-to-face meeting in mid-November or at the time of the December email when we asked for a delay that they couldn't offer one, we could have sent a communication to all our customers explaining what was going on and we would have put them on an allocation at that time.
- Unbeknownst to Brunk, one of our customers ordered 30 railcars from Dow (that is 3 month's supply) in December thus exacerbating the railcar storage issue in January and February and leading to the \$77,000 in primarily CCC charges until our new storage track was established.
- But NS initially seemed reasonable (since they said it was "never about the money" but rather the "clearing of the Elkhart yard" to implement PSR) that if we put a plan in place to resolve the railcar storage issue that they would go to bat for us and get us a delay or forgive any invoices in that critical time period until our new transload track was ready.
- At the time we signed the lease with the EWR in early January, we put our customers on an allocation and were able to direct their cars to either our yard in Goshen or the EWR.
- But there were more delays because the NS did not have a viable address to give our customers regarding the EWR track, and NS was confused as to what address to use. This is clearly something that NS wasn't ready for even as they demanded we be ready.
- The shippers who use Brunk also asked for a few weeks to be able to update their ERP systems with the new address. Nothing was simple, and 3 months was not enough time.
- A very recent incident involved NS notifying Brunk of \$2000 of CCC charges because a shipper used "Care of Brunk" in the waybill but also with the correct EWR name and address. So those cars sat in the Elkart Yard for a week even though we kept telling NS to send them to the EWR and not Brunk. Eventually NS realized that this administrative issue was not our fault and we should not be invoiced but not after a lot of angst at Brunk and antagonizing by the NS.

- We would NEVER treat any of our customers the way that NS has treated us, but our customers have MANY options and we have ONLY the NS to get our product to run our business. They have monopoly power over us and it isn't fair that they didn't give us the time to implement their PSR initiative to their liking.
- For 25 years since 1994, the NS was more than willing to hold railcars for us in the Elkhart yard at NO CHARGE until we needed them. We assumed it was because they enjoyed the profits from shipping over 600 railcars per year to Brunk.
- We were forced in a short time frame to build EXCESS capacity in our railcar storage system to allow for the NS to EMPTY their Elkhart hump yard! They require that all cars must be shipped within 24 hours of their arrival in the Elkhart yard or we face either \$60/day/railcar storage fees or if we go over a constantly changing level of what they consider "congestion" those CCC charges go to \$100/day/railcar. That is just too high when I can charge my customer not even \$10/day!
- And their definition of "congestion" changes every two days looking back only two weeks in time. If we have a quiet two weeks and don't take many cars from the Elkhart yard, then a slug of cars is delivered to the Elkhart yard at a time we are at or near capacity, those CCC charges of \$100/day will come into play. This is completely unfair and we are penalized when we don't receive many cars in a narrow two-week window.
- We also need a small grace period of 48 - 72 hours (instead of just 24 hours) to allow our track to empty or even allow for a small percentage (e.g. 5%) of our total capacity of 126 (so 6 railcars) to be excluded from storage fees or to have something reasonable like \$10 fees for the first 48 – 72 hours for those 6 railcars. This would allow for a win-win compromise. NS would still mostly achieve their "hump yard emptying" PSR targets while Brunk, our customers, and their suppliers can still operate our businesses in a reasonable fashion.
- This is the kind of resolution I would like to see from the STB. A compromise versus a cramming down our throat of new tariffs by a monopoly railroad.
- One last point: when we were told on many occasions by our ONLY NS representative (we were told we could not speak with anyone directly in upper management regarding the implementation date issue) that if we put a "solid" plan in place they would either consider a delay in the tariff start date (we asked until April 1, 2019 but we actually did better than we thought we would) or that NS would forgive the invoices in those critical first few months, we took that as a "Yes". Otherwise, they should have said "no", since "no" would have meant "no". They exacerbated the issue by also stating that the tariffs "weren't about the money" but rather a "stick" to us to achieve their "carrot" (an empty humpyard). NS now has "forever" to enjoy their empty Elkhart hump yard, to cut their costs, to let people go, to achieve their 60% OR targets and their PSR strategy. But that \$77,000 for the first two months of 2019 are just a financial killer for our small business making the smallest of margins yet allowing NS, Dow and the molders to make all their money.

