



The Resource for Warehouse Logistics

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May 7, 2019

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

Surface Transportation Board
395 East Street, SW
Washington, DC 20423

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

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

I'm Steve DeHaan, President and CEO of the International Warehouse Logistics Association. I represent 360 third-party logistics warehouse companies. We have about 3,500 warehouses throughout the United States and Canada. 50% of those companies have railroad shipping and receiving capabilities.

In my earlier days, I had some rail experience in the shipping of grain, receiving boxcars of flour, and receiving furniture via rail.

A third-party warehouse is a company that does not own any goods but provides warehousing services for other companies. These facilities receive, store, sometimes process or repackage, and ship goods for other companies. Some of those companies ship their goods via rail. These shipments need to be either unloaded or unloaded and loaded again for rail delivery to other locations.

Here's just as a very brief summary as to where I'm going with this testimony. We believe a resolution of the demurrage problem is to find something that is fair and reasonable under the law. We believe that an "Actual Placement of a car" in a position to be unloaded and "given 48 business hours – Monday through Friday" to be unloaded would resolve 75+% of businesses demurrage issues.

Why do we say *Actual Placement* would be a resolution?

1. Because, up to that point of actual receipt, Receivers have absolutely no control over a rail car. Receivers have some information and sometimes some communication, but absolutely no control. There is nothing a warehouse can do to avoid demurrage charges for itself or its customer. Nothing.

2. Because a warehouse has no control over a shipper's decision to send goods via a railroad. The Shipper only needs to know if a receiver can receive via rail.
3. Because a Receiver has no control over a railroad's operations, but you, the STB, do.
4. A warehouse has no control or input into a railroad's tariffs, but you, the STB, do. Tariffs under the law are supposed to be "reasonable rules and practices."
5. A warehouse has no control or input into when, how, the timing, what is reasonable, etc. about individual and minute changes in demurrage tariffs – an example of this is that six years ago, one railcar for one day's demurrage was \$50, then it was moved to \$75, then to \$100, then to \$150, and now some are at \$200. A 400% increase, and most Class 1 railroads have gone to a 24-hour unload time vs. the previous standard of 48 hours, which again doubles demurrage charges. This is an 800% increase in demurrage charges in six years. The increase is so much that it is now 3% of the overall railroad revenues. I view this as flogging the back of every of American who has to pay the increased price for their goods where the railroads are involved.
6. A warehouse has no control (but we do have information and communication) over the following items:
 - a. **Switching frequency** – Usually scheduled, but in many cases, up to 2/3 of them are missed by the railroad. Warehouses believe that they should be able to bill the railroad for the payment of the scheduled workers when a railroad misses a switch day. WHEN a railroad does not switch frequently enough to ensure cars are delivered on time, THEY create dwell time, not the warehouse.
 - b. **Capacity** – This is also known by the railroads. Just like the warehouse can see the cars coming, a railroad knows how many doors and how many service days have been scheduled for switching. They see all the car ETAs just like the Shippers and Receivers. WHEN a railroad has the knowledge of what volume is coming and does not adequately schedule their crews and equipment to get it to the door, THEY create dwell time, not the warehouse.
 - c. **Service days** - These change all the time, often without notice. Sometimes warehousemen show up in the morning and the cars are just there without anybody scheduled to unload them because they didn't know they were coming. Conversely, sometimes warehousemen come in the morning expecting cars, and there are none. Warehouses, like 90% of non-retail businesses, work Monday through Friday. The STB needs to create a fine for the railroads of no less than \$450/day for missed service days to cover a warehouse's actual costs for labor, dock space, and scheduled/rented equipment. WHEN a railroad does not communicate adequately for service days or just plain misses the agreed upon service days (which our companies tell us happens up to 2/3 of the time), THEY create dwell time, not the warehouse. Since precision railroading, service days have been cut dramatically and demurrage charges have risen dramatically. Poorer service and more expense. The rhyme and reason are impossible to predict, and therefore a warehouse cannot protect itself from demurrage invoices.

d. **Bunching of cars**

- i. While in transit
- ii. At rail yard facilities
- iii. In serving areas
- iv. Even on the warehouseman's siding

Bunching of cars, no matter where on the route, creates more cars coming in to a location than that location can handle. Please see capacity and service days. The railroad needs to be responsive by being customer centric to ensure their customer is served in a timely fashion. If they fail, THEY create dwell time, not the warehouse.

- e. **Emptied Railcars** – Emptied cars sit on the siding on dwell time until the next service day at No Charge. There is no difference in dwell time in the yard or on the siding. Once, again the railroad controls the dwell time and arbitrarily counts days in the yard but not days an empty car sits on the siding. If they truly need the cars in service to make a profit. They would get full cars to the door and empty cars back in service. If the railroads really need car to put into service, they have to have more service days. This points to the railroads hypocrisy relative to their dwell time arguments. They have actually created more dwell time under precision railroading as evidence in the dramatic increase in demurrage revenue.
- f. **Other Issues** - When warehouses request a car and the railroad fails to spot the car for various reasons including but not limited to crew available hours, service failure by the railroad, railroad errors thus resulting in backlogs and “bunching” of cars due to the railroad's error or failure. The railroad is at fault for dwell time, not the warehouse.

All of the above create demurrage charges. Yet, the warehouseman becomes demurrage liable even though he has no control over any of them. The only thing the warehouseman can control is unloading the rail car once it is spotted at their track. That is why railroad demurrage tariffs must be based on “actual placement.”

In the logistics arena, we need more railcars to haul goods. Currently, there are 55,000 truckloads of goods not being delivered every single day because of a lack of truck drivers. There is tremendous opportunity for the railroads to step up and fill this gap. They have to get much better at what they are doing and they can't keep flogging the backs of those that are in business to help them. The railroads also need to be moving more cars because their revenues are shrinking and they're going to continue to shrink if they continue their abusive demurrage practices and accessorial charges at the present level and continued abusive escalation.

The average warehouse charges \$450 to unload a rail car. The average warehouse has a margin somewhere between 4 and 6%, so let's just say 5%. Therefore, a warehouse hopes to make \$22.50 every time they unload a rail car. If they face \$150 to \$200 demurrage charges a day, they would have to unload *eight* more cars just to break even! This is creating a situation where warehouses are pushing back on rail deliveries or are dissuading their customers to ship via rail,

because of these adverse consequences to their business. This in turn causes the railroads' revenues to decrease. The current demurrage charges are hurting the railroads, the warehouses, and all Americans. There are better business models that increase profits and do not inflict harm and damage an industry.

It's easy to see why rail demurrage is one of the top complaints received by the STB. For the railroad, it's an easy invoice. For a warehouse is it tracking all of the above, putting a complaint together, talking with STB staff, talking with the railroad, providing whatever evidence is available (for some railroads there is almost none), usually negotiating a settlement. THEN, we do it all over again with the next instance. The insanity must stop. Please, put an end to it. The answer is actual placement with 48 hours to unload Monday-Friday, and stop all the arguing, proving, documenting, STB assistance, hearings, and worst of all, blaming.

Bottom-line: There is nothing a warehouse can do to avoid demurrage charges, unless the railroad's demurrage tariffs are based on actual placement of cars, the warehouse has 48 business hours to unload the cars, and the warehouse receives enough service days to meet their track capacity and business needs.

The current tariffs are totally unfair and unreasonable.

I implore the railroads and the STB to define demurrage charges as "after a car has been placed," ("Actual Placement") and the Receiver must be given adequate time to unload. For a warehouse, ample service days to meet track capacity and business needs, actually receiving railcars at the warehouse's track, and having 48 business hours to unload it should be the standard.

Thank you for this opportunity to present real world solutions to an awful, unfair, and unreasonable current demurrage situation causing today's hearing. I appreciate the opportunity to address the Board.