



The Resource for Warehouse Logistics

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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, Honorable Vice Chairman Patrick Fuchs,
Honorable Board Member Marty Oberman:

We sincerely thank the Board for taking a genuine interest in investigating unreasonable demurrage practices and accessorial charges.

After two days of hearings, it is obvious that the current system of "constructive placement" with all of its additional charges and fees and all of its additional systems, inherent problems, and inadequacies is not a good system. Below we will document some of the problems and Band Aid approaches to how they should be fixed; but we firmly believe that constructive placement is a bad system that needs to be replaced.

We believe that Shippers are paying to have their goods delivered to the Receiver. They are not paying to have their goods go into some Railroad-created quagmire of complex and complicated rules and problems for which they need to pay additional monies. The Railroads are being paid to deliver the car and to solve all the problems of ensuring delivery of that car to the Receiver, just as every other logistics company in the world would.

Further, the International Warehouse Logistics Association strongly believes this proceeding should result in immediate directives from the Board to the Class I Railroads, short lines, and other delivering rail carriers to modify their existing tariffs to incorporate certain concepts of reciprocity and commercial fairness.

IWLA respectfully suggests that such guidance should include the following minimum standards:

1. The Railroads should immediately restore the full complement of switches, as requested by Receivers and allow 48-hours for unloading.
2. Tariff provisions should clearly state objective and reciprocal criteria that apply when the Railroad is deemed to be at fault for delay or other action(s) that triggers the assessment of demurrage and accessorial charges (or the customer is otherwise not at fault), as well as the specific penalties or other actions the

Railroad is required to take to compensate the rail customer or excuse it from liability.

3. Railroad tariffs should contain commercially fair and reciprocal terms that appropriately relieve the customer from responsibility for instances when a customer is penalized under the tariff when the delay or other action triggering the charge actually is the responsibility of the Railroad.
4. Railroad dispute-resolution programs should be commercially fair, and, among other features, should delete any reference to collecting attorney's fees and other costs of litigation unless these same rights are extended to the Shipper should it prevail in its dispute.

Actual Placement

To demonstrate why Actual Placement is the preferred system to Constructive Placement, let's go through the litany of the changes that would have to be made to all the problems with Constructive Placement.

- a. **Switching frequency** – Usually scheduled, but in many cases IWLA members report that up to one-third of switches are missed by the Railroad with regularity. This creates more dwell time for the cars and lowers the car fluidity that the Railroads desire. It creates additional costs for the Shippers (as most Receivers are paid for their expense to unload a car and those costs will be billed to a Shipper). If demurrage under Constructive Placement is considered an incentive to get the cars to the door, then a missed switch fee to the Shipper or Receiver should be an incentive for the Railroads to perform as well. It is unreasonable and commercially unfair, and contrary to public interest to have it only one sided.

Actual Placement does away with both of the above as all the entities involved are incented to get the cars placed and unloaded, the Shippers, the Railroads, and the Receivers. Actual Placement more fully utilizes the technology and systems currently in place and stops the need to determine responsibility. A majority of the testimony at the hearing bore this out.

- b. **Capacity** – A Railroad knows how many doors and how many service days have been scheduled for switching for each and every Receiver. They see all the car ETAs just as the Shippers and Receivers can. The problem arises when cars are being bunched from numerous locations and various times in different yards. Railroads are currently doing this irrespective of the Receiver's dock-door capacity, even though they know the door count and the current switching schedule.

When a Railroad has knowledge of what volume is coming and does not adequately schedule its crews and equipment to get that volume to the door, nor does it communicate adequately with both the Shipper and Receiver, the Railroad creates dwell time and additional demurrage charges, not the Shipper or Receiver. There should not be demurrage charges for the Railroad's inadequate policies and practices as the rail company has the information and systems it needs to make it happen correctly. This is solved if system planning is done with the end in mind. It's obvious

that the Railroads are not planning from the end back, but only after the car arrives in the local yard. The testimony at the hearing attested to this numerous times.

- c. **Service days** - These change all the time and probably should depending on the number of cars that need to be unloaded. Unfortunately, the scheduling is done arbitrarily and businesses (Shippers and Receivers) are unable to schedule crews and equipment to handle unloading. Sometimes the Receiver is not given notice and sometimes the notice is not honored. Every time a car is not placed, there is an automatic demurrage billing, even when it is the Railroad's fault.

Often Shippers/Receivers show up in the morning and the cars are just there without labor scheduled to unload them because they didn't know the cars were coming. Conversely, often Shippers/Receivers come in the morning expecting cars, and there are none. Warehouses, like 90 percent 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 with no notice 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 the testimony noted happens up to one-third of the time), the Railroad created the dwell time, not the Shipper or Receiver.

Since the start of Precision Scheduled Railroading, service days have been cut dramatically and demurrage charges have risen dramatically: This is poorer service with more expense. The rhyme and reason is impossible to predict, and therefore a Receiver cannot protect itself from demurrage invoices. Almost everyone who did not represent a Railroad testified to this issue.

- d. **Bunching of cars** – This occurs while in transit; at rail yard facilities; in serving areas; and on the warehouse siding.

Bunching of cars, no matter where in the linehaul, creates more cars coming to an industry location than that location can handle. (Please see Capacity and Service Days.) Bunching, as borne out by the testimony of all (but the Railroads) has created huge numbers being billed for demurrage and has put tremendous pressure on the current credit systems. The **current credit systems** are set up to favor only the Railroads. When a switch is missed, credits need to be given for every car in the system, not just the number of doors or the number of cars on constructive placement. Why? Because it affects all the cars that are in line to be delivered and creates a backup of all the cars. In some instances, yard backlog may be cleared by the time the current cars in the system arrive; but as we heard in the testimony, that usually doesn't happen and a chain reaction is set off of demurrage charges.

If a Shipper/Receiver refused to have the cars placed, no problem with demurrage. When the Railroad doesn't offer or fulfill enough Service Days spotting full complements of cars to clear the number of cars in the yard or system, no demurrage should be charged. The Railroad needs to be responsive by being customer centric to ensure its customer is served in a timely fashion. If Railroads fail, they create their OWN dwell time, and demurrage, not the Receiver.

- e. **Emptied Railcars** – Empty cars sit on a Shipper's/Receiver's rail siding on dwell time until the next service day at no charge. There is no difference in dwell time whether the car(s) are in the yard or on the Shipper's/Receiver's rail 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. The Railroads are charging storage for cars in the yard, but they don't pay the Shipper/Receiver if they leave empty cars on their rail siding. Shippers/Receivers need their sidings emptied to be able to receive more cars. The Railroad sometimes uses those rail sidings for storage.

If an empty car is there longer than 48 hours, the Railroad should be paying the Shipper/Receiver to store the cars on its rail siding if the Receiver agrees to allow the Railroad to leave them there. If the Railroad truly needs the cars in service to make a profit, Railroads would get full cars to the door and empty cars back in service. If the Railroads really need cars to put back into service, they have to provide more service days. This points to the Railroads' hypocrisy relative to their dwell-time arguments. They have actually created more dwell time under Precision Scheduled Railroading as evidenced in the dramatic increase in demurrage revenue.

- f. **Congestion Fees** – Railroads create longer trains, but then don't expand their yards to handle and sort more cars. They then charge the Shipper or Receiver a fee for creating congestion? Railroads need to be held accountable for their own actions and they are really good at rationalizing their reasons (deflecting the blame). Congestion, more times than not, is solely a Railroad-created problem.
- g. **All the Demurrage and Accessorial Charges** – After the enactment of the Staggers Act and the decommissioning of the Interstate Commerce Commission, the Railroads were allowed to structure their own tariffs which were to be "reasonable and commercially fair." Everybody who testified during the Oversight Hearing heard that the Railroads really don't have rhyme nor reason to how they structured their tariffs, so it's obvious that reasonable and commercially fair was not part of their parameters or intent.

Everybody noted the tremendous and humongous increases in the number and amounts of fees being charged by the Railroads. The Railroads basically demonstrated that they don't care about their customers, don't have common sense, are disrespectful of their governing body, and think only of themselves. They are brash about it and flaunt their profits in the face of those they are penalizing. The Railroads' fees need to be reasonable and commercially fair. They are currently excessive, onerous and virtually all Railroad tariffs need to be morphed into some kind of reasonableness. We tried to read and understand the new rate decision and it makes no sense to the common business person.

Why Actual Placement would be a resolution?

1. An Actual Placement System solves Railroad operating issues that occur beyond a Shipper's/Receiver's control. Deliberate car bunching, reduction of service, erratic spotting, missed switches, cars left in the yard, etc., (all common causes of current demurrage charges) would be eliminated.

2. The demurrage clock in all Railroad demurrage tariffs will start at 12:01 a.m. the next day following Actual Placement. Having the demurrage clock start at 12:01 a.m. the next day after Actual Placement allows a Shipper/Receiver adequate lead time to schedule rail work crews, equipment, and additional modes of transportation for the goods, if needed.
3. Car loading-unloading free time needs to revert back to *decades of a reasonable* usual and customary practice: 24 hours loading and 48 hours unloading to allow Shippers/Receivers adequate time to load-unload cars.
4. Service days should be limited to Monday through Friday, normal operating days for Shippers/Receivers. This eliminates demurrage charge accruals on the weekends when Shippers/Receivers are not operating and have to load-unload cars uncompensated for labor overtime. Where applicable, the Railroads can still spot on the weekends to reduce dwell time, but Shippers/Receivers would not be liable for demurrage accrual.
5. Shippers/Receivers agree to take 'full complement' switches to their service day track capacity on normal operating days. Taking full complement switches helps relieve car dwell time and congestion. It also and promotes fluidity.
6. Shippers/Receivers can still be penalized for demurrage charges, but only for purposeful delays beyond free time after Actual Placement.
7. Actual Placement totally eliminates the extremely expensive and arduous labor cost of tracking cars. A Shipper/Receiver and the Railroad merely have to track and document Spots and Releases.
8. The need for a Credit-Debit System in an Actual Placement System is eliminated because demurrage charges are calculated solely on Shipper's/Receiver's purposeful delay after 24 hours loading, 48 hours unloading free time after Actual Placement of cars.
9. Shippers/Receivers should be allowed to charge punitive fees for a Railroad service failure and missed switches to compensate the Shipper/Receiver for a labor force scheduled but not used.
10. Shippers/Receivers should be allowed to charge punitive storage fees if the Railroad fails to pull cars within 48 hours after release.
11. Demurrage and Fee Dispute resolutions: These resolution sessions would be minimized, saving tremendous costs in time and documentation to all involved – Shippers, Railroads, and Receivers.

The Railroads, through their tariffs and systems have created issue upon issue, trying to solve their self-inflicted problems (sometimes by just copying the others). They just need to simplify their tariffs and be responsible for getting the cars (goods) delivered to their destination when they are in their custody. They control the cars from pickup to delivery. They are responsible for solving all the complex and complicated issues

between origin and destination. Both Shippers and Receivers have shown tremendous desire to get the cars from point A to point B in a short amount of time. They cannot make more money if they don't. The Railroads have systems for collecting fees for not delivering the cars. This is at cross-purposes with and counterproductive to their customers. IWLA asks that the STB put all these groups on the same parallel: *Get the cars delivered.*

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 Receiver has 48 business hours to unload the cars, and
- the Receiver is afforded enough service days to meet track capacity and business needs.

The current tariffs are totally commercially unfair, unreasonable, and contrary to public interest.

We 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 Receiver, this means ample service days to meet track capacity and business needs, actually receiving railcars at the industry's track, and having 48 business hours to unload should be the standard.

Thank you for this opportunity to present real-world solutions to an awful, unfair, and unreasonable current demurrage situation that necessitated the Demurrage-Accessorial Charges Oversight Hearing that lasted a long two days. We were at the hearing and we are not alone. If you take the room times about 200, you probably have the number of companies that are grossly affected (CSX said it sent demurrage bills to 50 percent of its 5,000 customers). We appreciate the opportunity to address the Board and for your service for the public. Our fate and the fate of this industry is in your hands.

On behalf of the members of the International Warehouse Logistics Association,



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