

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 754

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OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

WRITTEN COMMENTS OF
MATHEW A. BRAINERD
BRAINERD CHEMICAL COMPANY, INC.

Brainerd Chemical Company, Inc. (Brainerd) respectfully submits these comments in response to the Surface Transportation Board's Oversight Hearing on Demurrage and Accessorial Charges. Brainerd and our trade association, the National Association of Chemical Distributors (NACD), are pleased that the Board is collecting information on railroad demurrage fees and accessorial charges. While these comments are submitted by and primarily focus on the experience of Brainerd Chemical Company, Inc., they also represent of the experiences of the many other members of the National Association of Chemical Distributors who use rail service.

1. Identity and Interest of Brainerd Chemical Company, Inc. and the National Association of Chemical Distributors

Brainerd Chemical Company, Inc. (Brainerd) is a major supplier of chemicals for industrial plants, the energy market, animal/health food, agriculture, and water treatment, with over 3,000 customers in almost every state. Brainerd is among the top 100 U.S. chemical distributors with large-scale high-speed packaging, rail terminaling, bulk storage, bulk blending, contract packaging, and logistics facilitating for large organizations. In 2002, Brainerd transitioned from a small distributor to a regionally competitive player, solely because of rail. We now move over 20 million pounds of product per month by rail and truck and common carrier

and have 7,000 feet of rail spur with a rail car capacity of 82 among three company locations. Brainerd receives an average of 11 million pounds of bulk product each month via rail shipments. We unload these products and break them down into smaller packaging for our customers. Timely and dependable rail service is critical for Brainerd in meeting the needs of our customers.

The National Association of Chemical Distributors (NACD) is the premier trade association representing the U.S. chemical distribution industry. NACD and its more than 430 member companies deliver nine tons of product every 8.4 seconds. These distributors maintain a safety record of less than one incident for every half million miles traveled through participation in NACD Responsible Distribution®, a mandatory third-party-verified environmental, health, safety, and security program. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end users in nearly every industry sector ranging from cosmetics to automotive to paints and coatings to food to water treatment. Like Brainerd, a substantial percentage of NACD members receive products via rail cars and depend on timely shipments from the railroads in order to meet the needs of their customers.

2. Recent Experience with Demurrage

Brainerd has been concerned about questionable demurrage charges for several years, but the problem has been exacerbated in the past 18 months by a reduction in the time allowed to unload rail cars before being subject to the fees. In 2018, CSX, the only railroad that serves our facility in Danville, IL, informed Brainerd of a reduction in the amount of free time allowed for us to unload rail cars from 48 to 24 hours, seven days per week. This means that if CSX arrives

with a rail car at 11:00 p.m. on a Friday night, we only have until 11:00 p.m. on Saturday night to take the car in order to avoid demurrage charges.

There is no opportunity to negotiate the terms of delivery with customer service as the process for ordering and arranging for rail car switches to our plant is done completely online. We must log on to the CSX portal, ShipCSX.com, to receive daily email notifications for demurrage charges, rail cars coming to the plant, rail car switches, trains servicing the plant, and rail cars placed or pulled. Once logged in, we can also go into Plant Switch and look at Plant History and inventory. Once we are notified that a rail car has reached our Danville rail yard, we use ShipCSX.com to arrange for a switch by selecting Plant Switch and then Inventory/Switch Request. Rail cars available for switch to the plant will be listed. We then check the rail car we need to place or pull. Once we check the rail car, we click Modify Switch Request, Requested Event Place or Pull, Track and Spot. If the car is being pulled, we change the box? to empty and then click Submit. An email notification will then show our Plant Switch. We are serviced Monday, Wednesday, and Friday nights, and we have until 2 p.m. that day to create a switch for that night. We can also receive email updates on the rail car progress.

If the switch of a rail car to our plant does not happen, we log in to ShipCSX.com and enter a Shipment Problem Resolution within the website. We explain that we requested a switch and ask why the railcars were not placed. Customer service will then respond with what the issue was and whether it was the railroad's or ours.

Following are two recent examples of how this process can break down, resulting in demurrage charges for Brainerd and excessive company staff time attempting to have the problems resolved, even when the problem was on CSX's end, not ours.

Example 1

On Tuesday, February 19, 2019, our Danville plant ordered a switch for two rail cars, and we received an email confirmation for the order. These two rail cars should have arrived Wednesday, February 20, 2019, but failed to do so. On Thursday, February 21, we submitted a problem log asking why the switch did not occur. We received an email response from CSX stating that the cars did not schedule to the crew's work order due to a system issue on CSX's side and that the issue had been corrected. The cars were rescheduled to be placed Friday, February 22. On Monday, February 25, our team arrived at our Danville plant and found that no rail cars had been delivered. We submitted another inquiry to CSX, to which they responded that the cars were on a work order and reported placed at 10:19 that morning. These cars were not placed on February 25, but finally delivered Friday, March 1, nine days after our requested date of Wednesday, February 20.

During this time period, we received daily demurrage charge summaries from CSX, all with balances of \$0.00. In mid-March, we received a demurrage invoice from CSX for \$1,500 for these two cars, despite the fact that the delays were all on CSX's side, as admitted in the company's earlier email updates. Our staff emailed the CSX contact listed on the invoice and were told we must go through the dispute process on the ShipCSX.com website. Since then, members of our accounting and operations team have been working to escalate this problem with CSX. To date, the issue remains unresolved.

It is absolutely unacceptable for CSX to charge Brainerd thousands of dollars in demurrage fees when the delay was clearly their fault, as admitted in emails during the process. This is exacerbated by the fact that CSX has been unresponsive to Brainerd's efforts to resolve the issue, despite the extensive time and effort my staff has spent seeking a response.

Example 2

On Thursday, March 28, 2019, Brainerd personnel entered into ShipCSX.com a plant switch for two empty rail cars to be pulled from our yard in Danville and for one full rail car to be placed into the yard. We received a confirmation email for this order. Because our switches occur on Monday, Wednesday, and Friday evenings, we placed this order on Thursday for a Friday, March 29, night switch. This would have given us a full rail car to start our business day and week on Monday morning. At 2:30 a.m. on Monday, April 1, CSX sent us an email stating that their train crew reported they were unable to switch the car due to problems attributable to our facility and that the release date for the car would be adjusted and the requested pull rescheduled to the next service day. At 4:00 a.m. on Monday, April 1, CSX sent a second email stating that their train crew did not switch the car as requested because an employee at our facility asked for this change and that the release date on the car would be adjusted. This was particularly surprising as the only people at the plant at that hour were the guards, who do not have the authority to cancel switches without talking to our Danville plant manager. The plant manager did not receive a call for the cars not to be switched. At 7:30 a.m. on Monday, April 1, Brainerd staff logged into ShipCSX.com and entered a dispute in the resolution center to understand further why we received two different emails with two different responses about why the two empty rail cars were not pulled and the loaded rail car not placed into our yard. At 8:57 p.m. on Monday, April 1, we received an email confirmation that the CSX train would service our facility. The cars were switched in the early morning hours of Tuesday, April 2. Brainerd never received an acknowledgement that CSX made a mistake.

Of Brainerd's three facilities with rail capacity, our Danville, IL, location is the only one served by just a single Class One railroad. Our other two facilities with rail are both in Oklahoma

and are served by short line railroads, which are much more responsive with customer service. It is frustrating, time consuming, and unproductive to deal with the bureaucracy and unresponsiveness of CSX regarding issues at our Danville plant. Unfortunately, this is our only option as CSX is the only railroad serving this facility.

3. Impacts of Recent Changes in Railroad Demurrage Policy

Late in 2018, Board Chairman Ann Begeman wrote to all Class I railroads, including Union Pacific Railroad, Norfolk Southern Railway, BNSF Railway Company, and CSX Corporation, among others, “expressing her concern about certain planned changes to their tariffs governing demurrage and accessorial charges that are to become effective in January 2019.” In the letter, Chairman Begeman requested that Class I railroads provide additional information on these charges and the revenues that such fees generate for each company. As confirmed by the companies’ responses, demurrage fees generate hundreds of millions of dollars for the railroads.

The term “demurrage” in railway law is the charge on detention of rail cars, either to the shipper for holding the car, the receiver for not accepting the car, or to the connecting railroad(s) while the car is empty and returning to the home road. Demurrage is intended to serve the public interest by facilitating the flow of commerce through the prompt loading and unloading of cargo. In general, the person liable for demurrage is the one who assumed the duty to unload the cargo but failed to fulfill the responsibility – the purpose being to encourage speedy unloading and return of empties to improve utilization. However, demurrage fees have turned into a cash cow for Class I operators as servicing railroads frequently fail to pick up or deliver, yet the shipper is assessed a charge as in the above case of Brainerd.

This unfavorable situation for rail customers has been exacerbated by the advent and implementation of Precision Scheduled Railroading (PSR) by the Class I railroads. PSR has

created enormous delays and service issues for rail customers like Brainerd while also imposing more restrictive service conditions on us.

For example, the reduction in the amount of free time allowed for us to unload rail cars from 48 to 24 hours means that Brainerd must have employees always ready to receive rail cars or pay demurrage. This means that our employees must be on call more frequently than they would have been under the previous policy. In a tight job market, this loss of flexibility could cause impacted employees to seek work elsewhere. Other NACD members who use rail have similar concerns.

In a recent survey of NACD members, nearly 40 percent reported that they had received wrongful demurrage and/or accessorial charges. In 60 percent of these cases, the rail carrier failed to provide on-time delivery before the charge was imposed. Of these companies, 70 percent were ultimately successful in disputing the charges, while 30 percent were not. As did Brainerd in the example above, all of these companies had to spend valuable staff time disputing charges that should not have been imposed in the first place by the railroads.

4. Views on Demurrage Incentives and Reciprocity

In order to improve the current situation and to provide incentives for both customers **and** railroads to move product and rail cars more efficiently, Brainerd and NACD support the establishment and enforcement of reciprocal demurrage. Under reciprocal demurrage, when the servicing railroad fails to pick up rails cars, the shipper or receiver would charge the same demurrage rate per day and in the same time reference after constructive placement to the railroad. The practical effect of this reciprocal option is a reduction in the customer's shipping charges, especially when they have done everything within their power to meet their end of the contractual agreement. This would help to level the playing field for rail customers.

I have a real world example of how reciprocal demurrage would help. Brainerd leases three of our own rail cars. If these cars are delayed because of railroad inefficiencies, my company is moving less product, which negatively impacts our bottom line. A specific instance occurred at our Danville facility when CSX reneged on a commitment to switch four rail cars with product into our yard. This caused our plant to shut down, our part-time workers to be furloughed, and delays for our customers on their orders.

Reciprocal demurrage would provide railroads with a reason to move product and rail cars more efficiently and would help Brainerd and other rail customers to recoup some of the costs of lost business. It would provide railroads with more incentive to serve their customers in a timely manner and keep commerce moving.

5. Conclusion

Brainerd and other NACD members need reliable, efficient, and affordable rail service in order to run our businesses successfully and serve our customers. We commend the Board for investigating unreasonable demurrage fees and accessorial charges and for holding this important hearing. We look forward to working with the Board on demurrage reforms and other proposals to create a more favorable rail service environment for the thousands of customers who depend on this critical transportation mode to move products and our economy forward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mathew A. Brainerd', with a long horizontal flourish extending to the right.

Mathew A. Brainerd, Chairman
Brainerd Chemical Company, Inc.