

*Surface Transportation Board
Hearing on
Demurrage and Accessorial Charges
Remarks – Marvin H. Weiner
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Madam Chairman, Vice Chairman, and Commissioner, please accept my gratitude and appreciation for the opportunity to appear before you today and to share with you my angst, and that of so many others, some of whom are present, about the state of the US rail industry.

I appear before you today wearing a couple of hats, that of the President of the nation's largest privately held railcar lessor, Cryo-Trans, Inc. It is presently leasing in excess of 2,200 insulated and mechanical refrigerated cars. My business associate, Herman Haksteen, has or will be speaking to you today from a car lessor perspective and as President of the Private Railcar Food and Beverage Association (PRFBA). I also am owner of two 375,000 square foot refrigerated warehouses, one in Perryville, Maryland and the second in Chambersburg, Pennsylvania, each served by CSX Transportation. Today, I am very much concerned as a warehouse owner about the viability of these operations and the arrogance CSX exhibits on a daily basis. To be frank, my appearance here today is not without a great deal of soul searching. Allow me to explain.

In October of 2017, Cryo-Trans, Inc. CEO Herman Haksteen spoke before this same Board at a hearing that included testimony from the now departed Hunter Harrison, then Chairman of the CSX, which is the same railroad that serves my two warehouses. Six months later, in March 2018, demurrage and detention credit days were reduced from 3 days to 1 day, railcar placement times became erratic, service days were changed, and car placement refunds were eliminated. I would hope that further retribution by the CSX to my warehouse facilities will not again be the result following my testimony.

The Staggers Rail Act of 1980, Public Law 96-448, enacted on October 14, 1980, has as one of its stated goals (Section 3, sub (4)) "to provide a regulatory process that balances the needs of carriers, shippers, and the public". However, there is clearly no balance of the needs of the shippers. Moreover, there certainly is nothing "reasonable" about how the railroads' treat their shippers and the public. In Black's Law Dictionary (10th Ed.2014), "reasonable" is defined as fair, proper, or moderate under the circumstances; sensible". There is nothing fair, proper or moderate in the railroad/shipper relationship. The result of the present legal landscape has resulted in monopoly power of the railroads that inures to the benefit of their shareholders, without any financial consideration in their rates/accessorial charges of the shippers situation. Market power has been created by the railroads in the form of a duopoly after the consolidation of the industry that is unparalleled in other sectors of the economy. This market power gives railroads the ability to charge unreasonable rates and to treat its customers without concern for their businesses. Where railroads possess market power to this degree, they will use it to squeeze every last cent out of their customers with the least amount of work possible. Such is the state today of the shipper/railroad economic relationship. Railroads, without some additional regulation, can charge these unfair rates and engage in operations which ignore their customers. The costs of these practices are not quantifiable. Allow me please to offer a couple of personal examples/issues that speak to the subject of today's hearing.

Perryville Cold Storage in Maryland is located midway between Baltimore and Philadelphia and is, as stated previously, served by the CSX. There is a railcar delivery track adjacent to the main rail line between Baltimore and Philadelphia on which the Perryville cars are placed by the CSX. The delivery

track is almost a mile from the Perryville facility. The cars are brought to our facility from the delivery track by what is referred to as a third-party switcher. CSX starts the demurrage/detention clock at the time the cars are placed on the delivery track, NOT, when the cars are actually delivered to our facility. There is no consideration by CSX of when the facility receives the cars for unloading. In order to minimize the exposure to demurrage or detention charges, we have repeatedly recommended that the CSX deliver the cars directly to the facility, NOT, leave them for the third-party switcher. This then would be a fair and reasonable way to deliver these cars by having the clock start for detention and demurrage purposes at this time. Not only have we been unsuccessful in seeking this approach from CSX, but upon examination of charges for the years 2017, 2018 and to-date as an example, Perryville and Chambersburg have paid in excess of \$271,000.00 in demurrage/accessorial charges. To make matters even worse, these facilities are open five days per week, Monday through Friday. However, CSX delivers cars Friday night, sometimes Saturday night and Sunday night, the demurrage "free day" clock starting upon arrival at the delivery track. Bunching of cars on a Monday is a normal occurrence, with the CSX seldom giving relief from any of its charges. It is an impossible economic situation.

At our Chambersburg facility, much of the above is no different with the exception that the CSX delivers right to our door. The issue at Chambersburg is the same as it relates to weekend delivery and no credits for a facility that does not operate on the weekend. The issue is further compounded by the fact that there is no consistency of delivery times. Deliveries often occur at the end of the work day or, occasionally, when the facility has closed for the day. There is no "free" time allowed for Chambersburg, and bunching of cars is prevalent.

In closing, the STB needs to hold all railroads accountable for their unreasonable behavior in this new era of Precision Scheduled Railroading. Until the STB takes a firm position in protecting shippers from the arrogance and monopolistic power of today's Class I railroads, the results will continue to be the same, a deteriorating service level and a push by the railroads to pass on to the consumer the costs associated with the inefficiencies of the system. I join in respectfully requesting that the STB consider the plight of the shippers, receivers and private rail equipment lessees, by crafting an overall policy of reasonable treatment of shippers by the railroads.

Thank you again for affording me the opportunity to be a part of the hearing today.

Respectfully Submitted

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