

Shea Brothers Lumber Handling, Inc.

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May 01, 2019

247653

Via First Class Mail

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
May 6, 2019
Part of
Public Record

Re: STB Docket No. EP 754, Oversight Hearing on Demurrage
and Accessorial Charges

Dear Ms. Brown:

Pursuant to the Notice issued in the captioned proceeding on April 8, 2019, please accept this written submission from Shea Brothers Lumber Handling, Inc.

On December 18, 2018, we submitted the attached letter to Ms. Lucille Marvin, Director of the Surface Transportation Board's Office of Public Assistance, Government Affairs, and Compliance summarizing our negative experiences in 2018 with the demurrage practices of both CSX Transportation, Inc. and Norfolk Southern Railway Company. As the letter explained, Shea Lumber is a small, family owned rail-to-truck transload facility located in Delanco, New Jersey. We receive 1400-

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1500 carloads of lumber from the CSX and NS annually. The December 18 letter also provided a summary of the history of our company and a description of our facility and operations. The letter explained how, after paying very little in demurrage charges in years prior to 2018, the material changes CSX and NS made to their demurrage tariffs resulted in our company being charged hundreds of thousands of dollars for demurrage in 2018 because the tariff terms are virtually impossible to comply with. Finally, we expressed our grave concern over the potential adverse effects of the changes NS had announced to its demurrage policies in late 2018.

This letter is a follow up to our prior correspondence and a summary of what has transpired since. In a nutshell, the demurrage practices of both CSX and NS continue to cause our company severe harm and may eventually force us out of business.

Neither CSX nor NS would waive their 2018 charges in their entirety. We eventually negotiated a settlement on our 2018 demurrage charges by paying \$114,675 to CSXT and \$33,000 to Norfolk Southern after weighing the cost and other considerations of the alternative of litigating against both railroads before this Board and/or federal court. Unfortunately, the combined amount paid to the two railroads represented all of Shea Lumber's profit for 2018.

In order to try to avoid the harsh outcome of 2018 by offsetting some of the demurrage costs we began to incur in 2019 and anticipated we would continue to be charged, we reluctantly began charging our customers a fee of \$225.00 per car beginning February 1, 2019. This charge has supplied some revenue to offset demurrage charges of

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\$53,686 for the first quarter of 2019. However, our business operates on small margins and so it should not come as a surprise to the Board that imposing this fee has had negative consequences. Specifically, this new fee caused our third largest customer to leave our reload operation. This customer is now trucking product from New England and New York to supply local customers. In addition, our second largest account has reduced their inventory position from approximately 55 sku's¹ to 10 sku's, which is a reduction of their railcar volume by 75%. This loss of business has essentially offset the additional revenues the fee has generated.

Because of the current CSX and NS demurrage practices and charges, the remainder of 2019 appears bleak and may well be our final year of business unless there is a change in their demurrage tariffs, and in particular, the method of calculating demurrage.

Shea Lumber is aware that it may ask this Board to remedy the situation through the filing of a formal complaint. However, a small company like ours must weigh the cost, time, and uncertain outcome of litigation against trying to cope with unreasonable railroad practices. We submit that the most effective way of addressing this current problem is for the Board to closely review the CSX and NS tariffs as part of this hearing proceeding, and to direct CSX and NS to revise their respective tariffs to make them reasonable and commercially fair. As summarized in our December 18 letter, in our experience the main source of our increased charges is both carriers' reduction of allowable unloading time from two days to one day, and the lack of a credit system

¹ Stock Keeping Unit.

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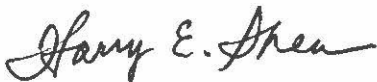
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that permits "positive days" to accrue to the point that charges are completely offset.

In conclusion, Shea Lumber commends the Board for holding this timely oversight hearing, and we hope this process culminates in changes to the CSX and NS demurrage tariffs that reasonably advance the policies behind demurrage in a manner that is commercially fair and reciprocal, rather than the clearly one-sided situation that presently exists.

Sincerely,



Harry E Shea

President

Shea Brothers Lumber Handling, Inc.

Shea Brothers Lumber Handling, Inc.

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December 18, 2018

VIA EMAIL

Ms. Lucille Marvin, Director
Office of Public Assistance, Government Affairs,
and Compliance
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Director Marvin:

I am writing to you to share with you our difficulties with the current demurrage rules of CSX Transportation, Inc. (CSXT) and the problems we anticipate from the Norfolk Southern Railway's (NS) tariff changes to be effective January 1, 2019.

First, I'd like to introduce my company. We are a family owned rail-to-truck transload facility located in Delanco, New Jersey handling lumber and building material for the home construction industry. My family began in the lumber business in 1915 when my grandfather hauled lumber from the piers in Philadelphia to local lumber yards. The trucking business grew in the post WWII era and supported my father, his three brothers and their families. When lumber began to be kiln dried and travel by rail I opened our rail facility in 1989. The company is owned by my brother and myself. We have six yardmen, five delivery drivers, and 2 office staff.

Our customers are mid-size wholesalers selling to lumber yards in the Philadelphia and tristate area and beyond. While we are the very definition of a small business, we still receive 1400-1500 carloads of lumber from the CSXT and NS annually. Our facility is located in the New Jersey Shared Asset area served by

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Conrail. 2018 was a record year in terms of the number of rail cars sent to us, as we are presently in a red hot building market.

We work tirelessly to off load all our railcars the day they are spotted. Prior to 2018, we rarely paid any demurrage charges to either CSXT or NS. That changed for CSXT when it significantly changed its demurrage policies in late 2017. The attached letter to CSXT summarizes our concerns with its sudden reduction of the allotted time to off load a rail car to one allowable day before demurrage charges begin to accrue. This is a major problem for our facility, which has eight car spots, because when the spots are filled but CSXT still brings cars they are all constructively placed in a nearby rail yard and the demurrage clock starts to run. Moreover, CSXT now counts all days, including all weekends when the railroad is not providing service, and all holidays. This problem is exacerbated when the rail yard becomes clogged and our cars cannot be moved because they are blocked by other cars. Unfortunately, our letter and subsequent conversations with CSXT did not result in any changes in CSXT's behavior, and after paying no demurrage to CSXT in 2017 we have been assessed hundreds of thousands of dollars in demurrage charges since May 2018, which we have disputed.

As for NS, we fear that the NS tariff changes effective January 1, 2019 will also result in us being assessed significant demurrage charges by NS after they go into effect. This is because among the planned changes to Item 1010 of NS Tariff 6004-D is to follow CSXT's lead and reduce allowable unloading time from two days to one day. As with CSXT, reduction to one day by NS will not allow for any positive days (demurrage credits) to accrue, thereby increasing demurrage charges owed.

Simply put, our company cannot continue to operate if these railroads are going to assess us exorbitant demurrage charges as part of their efforts to reduce their respective operating ratios. Consequently, the new demurrage practices of CSXT and NS may very well cause the permanent closure of our facility and the unemployment of our workforce. To put it mildly, in our experience the recent amendments to both railroads' tariffs do not comport with Chairman Begeman's recent statements to NS that tariff changes should be balanced, create appropriate incentives for shippers and railroads to utilize our respective assets, and should also

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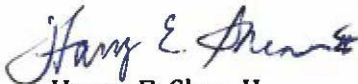
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be commercially fair. The proposed changes to NS's demurrage rules are also inconsistent with NS's responses to Chairman Begeman that the changes NS is making to its operating plan to reduce its operating ratio are "intended to benefit our customers," to "help our customers grow," and to "properly align stakeholder incentives with improving our asset utilization."

Sincerely,


Harry E. Shea II

Cc: Chairman Ann Begeman
Vice-Chairman Deb Miller
(enclosure)

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August 25, 2017

Melissa Hodges
CSXT

Dear Melissa,

Having had an opportunity to collect my thoughts following our conversation on Wednesday, August 23, which took me quite by surprise, to say the least, I have a few questions which hopefully you or someone at CSX could answer.

Number one question is how can a contract signed by both parties and adhered to be unilaterally terminated prior to its expiration?

Secondly, does CSX still intend to give allowances for non-service days as is the current policy?

An additional problem I foresee is the following, when cars arrive at Pavonia yard, Camden, NJ they are automatically CP'd by the computer system but they cannot be ordered until the Conrail crew moves them to a shipping track which can take 6 hours up to several days. Will there be grace given for this time?

Most troubling concerning the proposed one day allowance to unload is the inability to accrue any positive car days. This apparently means the end of averaging positive vs. negative car days for any given month. Considering that we unload seven cars daily anytime there are eight or more cars in Pavonia Yard we will automatically have a demurrage charge. Fifteen or more cars means two days demurrage on some cars and so forth.

Also many times during the month we have the following scenario occur. We must, by joint asset rules, order our next day's drill before 2:00 pm. If a car arrives after 2:00 pm it is not orderable that day. However, the demurrage clock starts midnight of that night! Thus when the car is ordered the following day and arrives the day after that it would have accrued 2 days demurrage before we even have an opportunity to touch the car!

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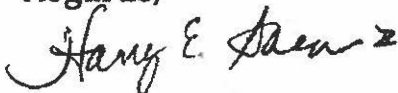
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All of the issues I raise are ongoing but are not a problem because of our current CSX contract. Changing to a single day to order, have spotted, and off load a car would be disastrous to us and our customers.

In light of our car volume and our 28 years of reload operations in which we have not been a demurrage abuser I am urging CSX to reconsider any change to the existing agreement.

I look forward to your answers and consideration of all of the above.

Regards,



Harry E Shea II
President Shea Brothers Lumber Handling, Inc.