

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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ENTERED
Office of Proceedings
May 8, 2019
Part of
Public Record

Docket No. EP 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

**OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL
CHARGES PRFBA TESTIMONY**

The following is the testimony Private Railcar Food and Beverage Association (PRFBA) will present at the May 22nd Hearing in the above-captioned matter. Herman Haksteen, President, will represent and speak on behalf of PRFBA. He will be joined at the hearing by several PRFBA shipper members. For the sake of time, PRFBA and these individual shippers will speak as a group rather than individually.

Our Testimony:

Honorable Members, PRFBA thanks the Surface Transportation Board (STB) for holding this hearing and bringing focus to these railroad demurrage and accessorial charges issues. PRFBA respectfully asks for your continued oversight of the Class I Railroads' unreasonable practices regarding these issues.

It is clear that there is a nationwide issue with these charges because many other groups and companies have provided written submissions to the STB on the issue of demurrage and have agreed to testify in this public hearing to present their testimonies regarding the impact of these charges on their businesses. Demurrage charges have had a huge impact on the food and

beverage industry as well, and PRFBA supports these comments made by other shippers on the subject.

The Private Railcar Food and Beverage Association represents numerous prominent companies that own or lease refrigerated and insulated railcars. PRFBA would like to bring your attention to the impact of charges, known as “Private Car Detention”, “Private Car Storage”, “Private Empty Car Storage”. To clarify, privately owned or leased railcars that are not spotted immediately upon arrival to shipper or receiver tracks for loading or unloading can be assessed a daily charge even though these are private asset which have no cost basis to the handling railroad.

All Class I railroads in the United States have tariff provisions that provide charges for private car storage. All of the USA Class I railroads have updated their tariffs since January of 2019. NS started this activity when it revised its demurrage tariff in October of 2018, effective January 1, 2019. The major change to this tariff completely eliminated credit days for private railcars, so charges effectively begin on day 1 of notice of available placement. The BNSF tariff issued February 15, 2019, effective March 7, also provided no credit days for private cars and imposes a charge of \$150.00 per day for private cars on railroad property. Private car storage charges now range from \$60 to \$150 dollars per day depending on the railroad.

The railroads believe they have the right to charge for storage of these assets when those assets are on their tracks. They claim it is done to keep the railroads fluid. However, shippers strongly believe that these fees, which are inconsistently assessed on private cars, are solely used by railroads to earn additional revenue.

Without a shipper's investment in these private railcars, this freight in most cases would not move by rail. It seems counterintuitive to penalize shippers that bring valuable assets and significant revenues to the railroads.

PRFBA agrees that there should be some reasonable arrangement between the railroads and the shippers or receivers for the use of railroad track and to keep a shipper's focus on moving railcars. PRFBA does not agree with the unreasonable practice of charging, and in the above-described cases, charging immediately, with no consideration of why the final spotting of a car was not completed.

Under normal circumstances where two reasonable business partners are working together to make transportation operations as efficient as possible, accommodations for delivery are usually made seamlessly. Unfortunately, in the rail world, private railcars begin to accrue charges as soon as available for delivery to a receiving warehouse regardless of the receiving warehouse's hours of operation, its ordering patterns, its infrastructure or other important factors.

Most receiving warehouses are limited in track space and have limited operating hours. Typically, a transportation provider would take into consideration the infrastructure at its customer's facility and its customer's hours of operation. In the railroad world, the railroad alone decides when it will spot cars, when it will make a car available for placement, how many cars will be placed at any given time, and finally if they will charge storage for the cars they leave behind in their railyard.

This issue has been significantly impacted by Precision Scheduled Railroading (PSR). In an attempt by railroads to become more efficient, they are seeking longer, heavier trains on high volume scheduled lanes. The net impact of this new service model is that railcars get bunched in route while waiting for the next full train to depart. PRFBA has been told by several railroads

that the term for this occurrence is no longer called “bunching”; this negative delivery practice is now referred to as “train building” in the PSR world.

Undoubtedly, it can be more efficient for railroads to take more cars on fewer trains, but unfortunately the impact of their efficiency is a deficiency to the end user. The railroads should be looking at ways to compensate private-car users for investing in their rail transportation; instead, the railroads assess these unreasonable, punitive charges designed to collect revenues from shippers and receivers that are unable to simply adjust their operations instantly to accommodate a railroad’s new operating practices.

Take for example a warehouse that has two car spots. The warehouse has informed its shippers that it has only two-car spots. The shippers understand those limitations and sends only two cars per day to that receiver. However, during transit across the country, the two cars loaded on Monday, the two cars on Tuesday and the two on Wednesday somehow get joined together in transit. As a result, the receiver, instead of receiving two cars on Monday, two cars on Tuesday and two cars on Wednesday, suddenly gets six cars on Wednesday. However, the receiver only has two car spots and can only take the two cars from Monday, so the other four cars sit and wait in the railroad’s yard, accruing private car storage charges almost immediately on the above-mentioned railroads. These charges can be extremely costly to the shippers and receivers.

The hidden cost in this example for the members of PRFBA is the inefficient use of their assets. The daily accessorial charges of the railroad are only part of the overall cost burden to the car owners. Expensive, highly customized refrigerated or insulated cars are used in the food and beverage industry. These assets sit idle waiting for a slot to unload while the car owners continue to shoulder the daily lease or ownership costs of their assets.

The railroads would have you believe that this is a shipper-receiver issue. It is not. Infrastructure capacity has long been balanced between the shipper and receiver. It is the changes to the railroading model that have created this issue.

This new rail process supposedly to gain “efficiency” has caused additional bunching of cars, causing bottlenecks at both the shipping and the receiving locations. PRFBA agrees and understands that the railroads should be efficient. PRFBA shippers also want their businesses to be efficient; however, they cannot be efficient at the expense of their customers.

What has become extremely apparent since PSR became the norm is that railroad efficiencies come at a significant cost to shippers and receivers. That transfer of cost is shown very clearly in today’s Class I profit results. Suddenly a 60% operating ratio is the lowest acceptable number for a railroad. A number that is simply not achievable in most industries!

The railroads continue to drive their own efficiency and profitability goals. Unfortunately, these are not new efficiencies. They are simply passing on more costs to their customers, either directly through rates and demurrage and accessorial charges or through inefficiencies they are creating at the shippers’ and receivers’ expense. The same shippers, who invested in railroad equipment to help the railroads handle more volume and earn more revenue, are now being penalized by the subsequent revenue-producing policies of the railroads.

PRFBA respectfully asks the STB today to consider the reasonableness of railroad demurrage and accessorial charges. PRFBA asks that the STB strike down any unreasonable demurrage and accessorial charges on private car assets that have been discussed herein. Failing that, we would ask that the STB insist that the Class I railroads adopt mandatory performance-based pricing. This could be accomplished through a credit process where a railroad would provide daily credits to the private car owners when transit time exceeds published schedules or

when cars incur excess dwell time at origin or destination due to a railroad's train building or car bunching in transit. These credits would be applied as direct demurrage charge reductions on a load-by-load basis.

PRFBA would like to thank the STB for listening and for your consideration of the implementation of Fair Precision Railroading.

Respectfully submitted

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Dated: