

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 754

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

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

**WRITTEN TESTIMONY OF THE
CORN REFINERS ASSOCIATION**

Pursuant to the Board's notice served on April 8, 2019, the Corn Refiners Association ("CRA") hereby submits its written testimony for the hearing before the Surface Transportation Board ("STB") on May 22, 2019. John Bode, President & CEO of CRA, will present this testimony. CRA thanks the Board for holding this hearing to give shippers the opportunity to express their concerns with the recent changes in railroad practices concerning demurrage, storage and accessorial charges.

CRA is particularly concerned with the recent reductions in free-time before demurrage and storage charges begin to accrue, and with the overall lack of reciprocity and commercial fairness in rail practices. CRA asks the Board to invoke its recently restored authority to investigate rail practices, absent a complaint, to review and ultimately declare these free-time reductions unlawful. The Board should evaluate recent changes in demurrage and accessorial practices imposed by railroads based upon the following four factors:

1. Ensure reciprocity on demurrage and accessorial charges so that railroads compensate shippers for service failures.
2. The ability of shippers to comply with the new rules in a timely manner, if at all.
3. The role of rail service inconsistencies in the assessment of charges.
4. Railroad motivations, especially how railroads have profited from the new rules and charges either directly through demurrage payments or indirectly through new storage track leases and switching charges to and from remote storage track.

Each of these factors is informed by the experience of CRA members with the recent changes in demurrage, storage and accessorial practices, as discussed herein.

CRA is the national trade association representing the corn refining industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since 1913. CRA is comprised of five member companies, including Archer Daniels Midland Company, Cargill, Ingredion Incorporated, Roquette America, Inc. and Tate & Lyle Americas. For decades, corn refiners have been perfecting the process of separating corn into its component parts to create a myriad of value-added products. Our member companies accomplish all of this with more than 8,000 hardworking employees and one and a half billion bushels of corn, or about ten percent of America's corn crop. Together, our industry supports an additional quarter-million American jobs and has an annual economic impact of \$54 billion.

Corn refining is a value-added agricultural process during which kernels are separated into their principal parts (starch, germ, fiber, and protein). These ingredients are then utilized in thousands of different consumer products and industrial goods used every day all around the world. Corn refiners manufacture sweeteners, starch, advanced bioproducts, corn oil, and feed products from corn components such as starch, oil, protein, and fiber. For more than 150 years, our corn-related innovations in chemistry and technology have made food taste better, cosmetics last longer, pharmaceuticals easier to swallow, and plastics more environmentally friendly. And now, corn products are used in 3-D printing inks and studied by nanotechnology scientists as a method for delivering cancer treatments.

CRA members are highly dependent upon reliable and economic rail transportation for their products, both for inbound shipments of raw materials and outbound shipments of finished products. Rail service issues have disrupted the business of CRA members, resulting in additional costs, threatening our members' production, and jeopardizing their customer relationships. In many instances, those additional costs are imposed by the Class I railroads themselves through changes in their demurrage, storage and accessorial rules. Yet, it is the railroads' own service inconsistencies that frequently make those charges unavoidable. The

greatest irony is that the revenue railroads receive from these rule changes can increase the worse their performance becomes.

Therefore, above all else, CRA members desire reciprocity and commercial fairness from the rail industry. We do not object to charges that are truly designed to encourage rail customers to make efficient use of railroad assets. Such rules benefit everyone by helping to preserve the fluidity of the national rail network. But just as shippers should be responsible for their actions that misuse railroad controlled assets, railroads should be responsible when their actions misuse shipper/receiver controlled assets. Railroad service failures impose costs upon shippers for which shippers are not compensated. .

The recent changes in railroad demurrage, storage, and accessorial charges and practices vary across railroads and their impacts upon shippers can be equally varied, depending upon each shipper's individual circumstances. Although CRA members have experienced issues with all of the Class I railroads, their most recent problems have been on NS and UP. A common theme has been the reduction in free-time before demurrage and storage charges begin to accrue. Demurrage and storage charges serve a valuable purpose to encourage the efficient use of rail assets, such as railroad-provided cars and storage track, by holding shippers accountable for their actions that consume those resources beyond a reasonable period. But the new rules are more difficult and expensive for even the most efficient shippers to be compliant. Moreover, while the railroads attempt to hold shippers accountable for their actions that disrupt rail operations, the railroads do not accept reciprocal accountability for their own actions that disrupt their customers' operations and often impair their customers' ability to comply with the new rules. This needs to be a two-way street with charges that hold railroads accountable for their performance inconsistencies.

Previously, most railroads granted 24-48 hours of free-time before assessing demurrage or storage charges. On private rail cars, that free-time now has dropped to zero in most instances. That means when a private car, whether empty or loaded, arrives at the yard of the delivering railroad on Day 1, the receiver, if a closed-gate facility, has until midnight of that

same day to order the car for delivery to its plant on the next local train before storage charges begin to accrue. It doesn't matter if the railroad notifies the receiver of the car's arrival at 12:01 a.m. or 11:59 p.m.; the shipper only has until midnight. In theory, the receiver could have less than a minute to place that car order to avoid storage charges. There should be a minimum 24 hour grace period after the railroad notifies the receiver that a car has arrived before demurrage or storage charges begin to accrue.

For all CRA members, whether they have open or closed-gate facilities, their ability to actually accept a rail car with zero free-time is highly dependent upon their consistency of rail service. CRA members, for example, require regular inbound flows of raw materials and empty rail cars for loading finished product. They also require regular pick-up of loaded rail cars. If they run out of empty cars to load, our members may need to curtail production, which reduces the rate at which they can unload cars with raw material. Conversely, if they run low in raw material, they cannot load as many cars with finished product. Inconsistent rail service requires our members to keep more cars on-site than may be needed, as buffer capacity, so that their operations are not adversely affected by inconsistent rail service. Without that buffer, the operations of CRA members are subject to the vagaries of rail service without any recourse against the railroad for the damages it may cause. Therefore, free-time should be determined by the variation in rail service, especially if railroads are not held responsible for the disruption to shipper operations caused by rail service inconsistencies.

CRA members carefully manage their plant tracks to balance inbound and outbound rail traffic flows based upon scheduled rail service. Loaded cars that cannot be unloaded and empty cars that cannot be loaded occupy finite track space within a facility. When railroads deliver inbound cars in bunches, despite our members' best efforts to spread them out, our members cannot accept delivery of those cars all at once. This results in demurrage and storage charges through no fault of their own. Similarly, if a railroad misses a scheduled switch and doubles up on the number of cars delivered at the next switch, a plant may not be able to receive those cars all at once, leading to demurrage and storage charges. A late or early switch also can throw off a

shipper's plant operations. Therefore, if railroads are permitted to reduce free-time to zero days, railroads should be required to compensate shippers when they are unable to accept rail cars due to railroad service failures and inconsistencies.

For some shippers, compliance with reduced free-time is not possible with their existing plant infrastructure. They may need to construct additional storage tracks and/or fixed storage facilities within their plants, which may not even be possible. When it is not possible, shippers may need to lease storage track at a remote location. Often they lease that track from the same railroad assessing the storage charge. In such circumstances, the delivering railroad is collecting additional revenue regardless of what the shipper does. The shipper must decide whether to pay the tariff storage charge or to pay both a track lease charge for the remote storage track and a switch charge to move cars between that leased track and the shipper's facility. This raises concerns that railroads may be using their new demurrage and storage rules as a means to generate additional revenue rather than to address legitimate efficiency concerns.

Even those shippers who can adjust their operations to comply with the new rules often don't have the ability to make those adjustments within the short time frames in which the rail industry has imposed the new rules. New track cannot be built overnight and nearby storage track may not be available for lease, especially in areas where multiple shippers may be hunting for new track at the same time. In some instances, contemporaneous with their free-time reductions, railroads have either cancelled existing track leases or substantially increased the lease rates, which again indicates their motives may be revenue-oriented. Even if these rule changes are a legitimate part of implementing railroad operational changes, the railroads have had months to plan their operational changes whereas they have given their customers 45 days or less to make the changes needed to comply with the new rules. At the very least, railroads should waive the imposition of free-time reduction on customers who are demonstrating good faith efforts to comply with the changes.

Reciprocity is particularly appropriate for storage charges on private cars. When railroads supply the rail car, demurrage charges apply to encourage shippers to release the car for

subsequent use as quickly as reasonably possible. In other words, the shipper is compensating the railroad for detaining the railroad's asset beyond a reasonable time for loading or unloading the car. When shippers supply a private car, they are absolving the railroad of its common carrier responsibility to supply a railroad-owned car. Just as with railroad-owned cars, the more trips a private car can make, the fewer cars that are necessary. The railroad thus should have the incentives to return a private car to the shipper by completing the transportation as quickly as possible to maximize the efficient use of the shipper's asset. For example, just as shippers must pay daily demurrage charges for unreasonably detaining a railroad-owned car, railroads should pay a comparable daily charge for each day a private rail car is unreasonably detained by a rail carrier. But the rail industry refuses to undertake this reciprocal responsibility. The Board should not sanction this double-standard.

In letters to each Class I railroad last fall, Chairman Begeman stressed the importance "that tariffs are balanced and create appropriate incentives for both the customer and the railroad," expressed concern that "recent tariff revisions lack appropriate reciprocity," and urged the railroads to review their tariff changes "from the standpoint of commercial fairness." The responses from the railroads were underwhelming. Their examples of reciprocity were limited to their willingness to give demurrage and storage credits for selected service and weather-related issues that could delay a shipper's ability to load or unload a rail car. That is not reciprocity; it merely recognizes that shippers should not pay demurrage or storage charges when the extended detention of rail cars or occupancy of storage track is not the shipper's fault. While such credits will mitigate the demurrage and storage charges that the railroad may collect from a shipper, they do nothing to compensate the shipper for the costs to its operations caused by railroad service failures. If railroads are able to charge shippers for acts or omissions that adversely affect rail operations, reciprocity means that railroads should compensate shippers for acts and omissions that affect shipper operations.

To date, the rail industry has not articulated a clear connection between their new rules and practices and inefficient shipper practices. Indeed, many shippers are finding it difficult to

avoid the new charges by changing their practices. Historically, past reductions in free-time have been accompanied by justifications based upon technology or productivity advances that have made the shorter time frames reasonable and practical to achieve. Or railroads have demonstrated that the reduced free time will improve rail operations in a manner that will facilitate shipper compliance with the reduced time frames. Reducing free time all the way down to zero clearly must warrant comparable justifications. Rather than targeting inefficient shipper behavior, the current changes appear merely to shift more railroad operating costs to shippers and to create new revenue streams for the railroads. Those are not legitimate objectives for demurrage and storage charges.

As stated at the outset of this testimony, CRA asks the Board to invoke its investigation authority to review and ultimately declare these free-time reductions unlawful. That review should consider factors such as reciprocity for railroad service failures, shipper ability to comply with free time reductions in a timely manner if at all, rail service inconsistencies, and railroad motivations to create new revenue streams.

Dated: May 8, 2019