

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB Ex Parte No. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

TESTIMONY OF
PACKAGING CORPORATION OF AMERICA (PCA)

My name is Ross Corthell and I am Vice President of Transportation for Packaging Corporation of America (PCA). I also serve as Rail Committee Chairman and Board Director of the National Industrial Transportation League and Board Director of the National Freight Transportation Association. I have 26 years of experience in the transportation and supply chain arena. This testimony is being provided in my role at PCA.

PCA is the third largest producer of containerboard in the United States, and is the third largest producer of uncoated freesheet paper in North America, based on production capacity. PCA's white paper business operates under the trade name Boise Paper, a Division of Packaging Corporation of America. PCA is headquartered in Lake Forest, Illinois, has approximately 15,000 employees, and operates primarily in the United States.

PCA has six containerboard (brown paper) mills and two white paper mills. All of our paper mills are served by rail. Rail transportation is utilized by PCA's brown paper mills to transport large paper rolls from the mills to converting and processing facilities (e.g., box plants and sheet plants), some of which are PCA locations and some of which are third parties. Approximately 60% of these paper rolls are transported via rail, and the other 40% are moved by

truck. PCA's white paper business utilizes rail transportation for the shipment of palletized and paper roll product from PCA's white paper mills to PCA's distribution centers. These shipments are moved primarily by rail transportation; only a small portion of them move via truck transportation. PCA also has 95 converting operations or Brown paper box plants most of which are served by rail. Transportation from the PCA brown paper box plants to PCA's customers generally occurs via truck largely due to less-than-truckload volumes or multi-stop loads, as does transportation from PCA's white paper distribution centers. For these shipments, the seller almost always arranges and pays for transportation of the products.

In addition to paper mills and converting plants, PCA operates a commercial trucking division with over 600 dry van trailers and a short line railroad with 1,800 leased boxcars. In this context, PCA understands and supports the overall goal of maximizing asset utilization within the supply chain.

PCA thanks the Surface Transportation Board for holding this hearing and collecting data from the nation's railroads on their demurrage and accessorial charges. PCA has serious concerns about the changes that the nation's Class I railroads have recently announced and/or implemented in their demurrage and related tariffs, and the effect of those changes on our operations and costs.

In its Notice announcing this hearing, the Board noted that railroads are required to establish "reasonable" rules and practices for demurrage and related charges, and that demurrage rules and charges should be designed to fulfill national rail car hire needs and usage. The Board clarified that demurrage and similar charges have a dual purpose: first, they compensate the railroad for the use of its equipment and infrastructure, and second, they incentivize the efficient use of rail cars and encourage network fluidity."

PCA agrees with the Board that when analyzing the railroads' demurrage practices, it is appropriate to evaluate reciprocity and commercial fairness, the impact that operational changes are having on such charges, and the effects on network fluidity. The issues of reciprocity and fairness are particularly important in situations where the railroads are being compensated when their own conduct causes delays and inefficiencies. By comparison, PCA would never be able to devise a pricing mechanism that charges our customers in the event one of our machines fails to produce on-time and we stock them out of product only to flood them with product later.

In this testimony, I will cite actual data and circumstances that adversely impacted asset utilization for PCA. I will not be calling out specific railroads nor offering information where specific railroads may be inferred. Rather, I offer this testimony and the data as examples of systems that are not currently functioning within the spirit or goals of optimum asset utilization and commercial fairness.

I. Key Problems Related to Recent Changes in Demurrage and Related Charges

PCA has been and will be adversely affected by current changes in railroad demurrage and related charges in a wide variety of ways, depending on the operations of the shipping or receiving location. However, to simplify this testimony, I will highlight the most common concerns, which include the following:

A) Inconsistent Local Rail Service Can Adversely Affect Asset Utilization:

Railroads generally make no commitment to meet a shipper/receiver's schedule or service needs. Local service design and actual service vary widely and frequently make optimal resource planning for shippers/receivers nearly impossible. Large service windows add to the resource planning challenge (see Table 1). The range of local switching in this example is from

12:21 am to 11:53 pm. In other words, the railroad in this example gives itself a nearly 24 hour window in which to switch the facility and expects PCA to continually adjust its workforce to be available to unload whenever the cars show up and with expedience and precision. Cars are often constructively placed after local service request cut-off times have expired making it impossible to unload them within 24 hours at closed gate facilities. In the example presented in Table 1, the railroad imposed service request cutoff is 11:30 am. The railroad's own systems did not adequately capture the service issues and did not give PCA specific switch times (we had to recreate the history as part of the dispute process). The combination of tight service cutoffs and erratic switching, we accumulated demurrage invoices of roughly \$200,000. After extensive research on PCA's part, we disputed and settled for nearly \$80,000. This required months of negotiating at high levels of both PCA and the railroad to resolve.

Table 1: Local Service Switching Variability					
Date	Placement Time	Date	Placement Time	Date	Placement Time
2/28/2019	2:11	3/25/2019	9:24	4/12/2019	1:38
3/1/2019	2:28	3/27/2019	17:49	4/13/2019	21:24
3/6/2019	23:20	3/29/2019	22:17	4/16/2019	2:29
3/8/2019	1:20	3/29/2019	22:17	4/17/2019	0:39
3/10/2019	12:28	3/31/2019	9:01	4/19/2019	0:21
3/12/2019	20:51	4/1/2019	21:00	4/20/2019	1:08
3/14/2019	5:52	4/2/2019	20:27	4/22/2019	21:13
3/15/2019	3:07	4/4/2019	21:13	4/23/2019	20:05
3/16/2019	23:23	4/6/2019	19:55	4/26/2019	23:53
3/21/2019	2:00	4/8/2019	22:18	4/29/2019	19:42
3/22/2019	3:22	4/10/2019	2:45	-	-

Railroads often miss scheduled switches (see Table 2). The data in this table illustrates the quantity of missed switches and the impact on PCA's ability to unload. 5 of 23 scheduled switches were missed resulting in an overcharge of demurrage of \$15,500 at one location in one month. Although the railroad's tariff offered credits for their own service issues, their systems

did not capture these issues properly. PCA had to configure and produce data in a dispute process to offset erroneous billing. This pattern repeats itself frequently. In short, “precision scheduled railroading” has proven to be anything but precise at origin and destination which are the touchpoints between railroads and shippers/receivers. The new demurrage tariffs which further reduce free time and commercial fairness will exacerbate the need to dispute erroneous charges unless railroads are held more accountable for accurate record keeping and invoicing.

Table 2: Local Service Tracking						
Example August 2018		Reason for missed switch	Cars Released	Cars Possible	PCA Responsibility	PCA Demurrage
8/1/2018			2	3	1	100
8/2/2018			1	3	3	300
8/3/2018			4	3	2	200
8/4/2018	weekend				2	200
8/5/2018	weekend				2	200
8/6/2018				3	5	500
8/7/2018		Crew out of time	4	0	1	100
8/8/2018				3	4	400
8/9/2018			4	3	3	300
8/10/2018			2	3	4	400
8/11/2018	weekend		1		3	300
8/12/2018	weekend				3	300
8/13/2018				3	6	600
8/14/2018		Dispatch Delay	2		4	400
8/15/2018			2	3	5	500
8/16/2018		Crew out of time	2		3	300
8/17/2018			1	3	5	500
8/18/2018	weekend				5	500
8/19/2018	weekend				5	500
8/20/2018			2	3	6	600
8/21/2018			2	3	7	700
8/22/2018			2	3	8	800
8/23/2018		Crew out of time	1		7	700
8/24/2018				3	10	1000
8/25/2018	weekend				10	1000
8/26/2018	weekend				10	1000
8/27/2018		Crew out of time	3		7	700
8/28/2018			1	3	9	900
8/29/2018				3	12	1200
8/30/2018			3	3	12	1200
8/31/2018			1	3	14	1400
						17800

B) Rail Line-Haul Transit Variability Adversely Affects Asset Utilization:

Erratic local service is intensified by rail line-haul transit variability and “bunching.”

Bunching occurs when cars accumulate in the rail system and then are delivered all at once to a shipper or receiver’s facility. Bunching can occur for a wide variety of reasons but our data shows it’s mostly due to rail transit variability (see Table 3). Focusing on July in the top data set (single rail haul), the data shows for this origin/destination pair, PCA shipped 68 cars over 26 ship days. In this same month, the railroad Constructively Placed (CP’d) 63 cars over 11 days. The mean transit was 15 days but the standard deviation was 4 days. The transit range was 9 to 23 days. The pattern repeats itself month after month. Table 3 represents transit variation for two origin-destination pairs only, one in which there was a single railroad haul and one which involved multiple railroads.

Table 3								
Transit variation and bunching example 1: Single railroad								
Ship Month	Count of Cars Released	Count of Ship Days	Count of CP Cars	Count of CP Days	Avg Transit Days	Min Transit Days	Max Transit Days	Std Dev Transit Days
Jul	68	26	63	11	15	9	23	4
Aug	32	17	42	9	15	10	27	4
Sep	51	22	29	9	11	8	22	3
Oct	78	29	55	12	11	8	16	2
Nov	87	28	98	14	12	9	18	2
Dec	48	18	66	14	11	8	13	2
Total	364	140	353	69	12	8	27	3
Transit variation and bunching example 2: Multiple railroads								
Ship Month	Count of Cars Released	Count of Ship Days	Count of CP Cars	Count of CP Days	Avg Transit Days	Min Transit Days	Max Transit Days	Std Dev Transit Days
Jul	54	21	64	12	15	11	26	4
Aug	59	25	59	15	13	10	17	2
Sep	45	23	48	13	13	10	17	2
Oct	60	25	42	15	13	10	17	1
Nov	56	22	47	14	14	11	20	2
Dec	27	13	59	16	14	11	24	2
Total	301	129	319	85	14	10	26	2

Again, most railroads have provisions in the tariff that offer service credits but it’s been PCA’s experience that their systems do not capture rail transit variation on their own line, let alone in traffic interchanged between railroads.

For example and as noted above, many railroads charge demurrage even when they miss a switch, resulting in cars accumulating in the railroad's yard for delivery on the next service day. If the number of cars overwhelm PCA's ability to handle them, then charges start within 24 hours when the free time is exceeded, even though it was the railroads' actions, and not PCA's, that actually caused the problem. Even if the railroad provides relief in such a case, they often erroneously invoice bill for the charge which requires another dispute engagement.

In its 2014 decision in Ex Parte 707, Demurrage Liability, the Board declined a request by the National Industrial Transportation League to amend its proposed demurrage rules to account for rail car detention that was caused by the rail carrier. In its decision, the Board indicated that the receiver could "solve" the problem by pursuing a complaint with the Board.

However, PCA is in the paper and forest products vertical which is currently an exempt commodity and, therefore, not afforded the option to appeal directly to the STB in matters involving rail pricing without first engaging in additional costly litigation to determine if the exemption can be revoked. No reasonable company is willing to expend the time and expense required for STB adjudications, for regularly occurring disputes. PCA believes that the Board should revisit its prior decision and consider adopting a rule prohibiting the shipper/receiver from being charged, or requiring an extension of free time, when bunching or other railroad conduct prevents the shipper/receivers from avoiding the charge. This would better represent "commercial fairness."

C) The Process to Manage Demurrage is Inherently Flawed:

As noted above, most railroad systems do not take into account railroads' own service flaws and the impacts on asset utilization and ensuing demurrage. Railroads should be capable of tracking these service issues so that accurate invoices can be issued up front. Currently, the

burden of determining the accuracy of demurrage charges is placed largely on shippers/receivers like PCA. In other words, the first opportunity to dispute unreasonable charges is after the erroneous invoice has been issued and the railroad has booked a receivable.

The dispute process itself is flawed in that shippers and receivers are required to submit disputes via railroad web sites which are often programmed to accept only certain data. The front-line railroad employees that manage the dispute process often have very limited authority requiring escalation on both sides. It's been PCA's experience that the railroads' focus on operating ratio and headcount has complicated this as well. The overall process is hugely time and resource consuming and most often requires a separate negotiation between parties unfamiliar with the facts.

D) Substantial Increases in Demurrage and Storage Charges:

PCA is very concerned about the substantial increases in demurrage and storage charges imposed by all of the Class I carriers. These increased demurrage and storage charges are sometimes as high as \$250/car per day. Not only are shippers and receivers being charged more frequently in light of the reduction in free time, but the charges themselves have been increasing at a pace that far exceeds any rational cost increase or any fair incentive for the efficient use of rail assets. These charges are becoming unduly punitive and appear designed to generate substantial revenues for the railroads.

II. Possible STB Actions to Ensure Fair Demurrage Practices

PCA believes that the Board should take a variety of actions to ensure that demurrage, storage and accessorial charges are reasonable and commercially fair and is supporting the recommendations made by the National Industrial Transportation League and the American Paper and Forest Products Association:

First, the concerns about the carriers' demurrage and related charges and practice should initiate a Board investigation to determine if they are reasonable; consistent with the purposes of demurrage and related charges; and commercially fair to shippers, receivers and carriers. This investigation should include an examination carriers' charges and practices, and the actual performance of individual carriers in their operations affecting demurrage and related charges and the systems carriers use to manage and document demurrage and assessorial charges. The investigation should also consider if some of the charges and conduct are primarily designed to generate a revenue stream rather than fulfill national car hire needs and usage.

Second, the Board should initiate rulemakings in two key areas that the PCA believes are particularly suitable for the implementation of administrative rules:

a) The Board should initiate a rulemaking that would require an extension of free time or appropriate credits when the cause of the detention is beyond the shipper/receiver's control. In such situations, given the fact that the shipper is not at fault, it is unfair to require the shipper or receiver to bring a complaint against the carrier, with the burden and cost of such a complaint placed on the party not responsible for the problem. The existence of an affirmative rule requiring the extension of free time or the application of credits when the cause of the detention is beyond the shipper/receiver's control would properly place the burden on the carrier to show why the rule should not apply in a particular circumstance. The rulemaking should develop appropriate standards for the extension of free time or the application of credits by the carrier.

b) The Board should initiate a rulemaking to require rail carriers to publish clear, prompt and fair processes for dispute resolution, to insure that all parties involved in assessing and paying a charge know how a charge might be challenged; the timelines and data needed for

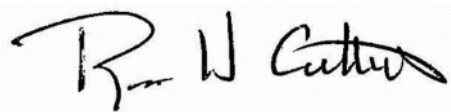
submitting a claim; the processes for resolving and deciding a disputed charge; and the deadlines for deciding a claim.

Third, the Board should, as a result of its investigation into the carriers' demurrage and related practices noted above, initiate a proceeding to develop a policy statement that would set out principles to ensure that such charges and practices are reasonable and commercially fair, including but not limited to the following:

- a) The need for objective standards in demurrage and storage rules that would prevent or at least discourage the application of arbitrary and duplicative charges
- b) The principles applicable to the establishment of minimum reasonable intervals of free time in various circumstances;
- c) Principles and procedures that would apply to challenges to the amount of demurrage or storage that is reasonable under the statute; and,
- d) Principles that would apply to the notice required for changes to carriers' demurrage, storage and accessorial charges.

PCA appreciates the opportunity to make its views known to the Board.

Respectfully submitted,



Packaging Corporation of America

Dated: May 8, 2019