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VIA ELECTRONIC FILING

The Honorable Ann D. Begeman, Chairman
The Honorable Patrick J. Fuchs, Vice Chairman
The Honorable Martin Oberman, Commissioner
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

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

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

Dear Chairman Begeman, Vice Chairman Fuchs and Commissioner Oberman:

Enclosed please find BNSF Railway Company's testimony to be presented at the public hearing scheduled for May 23 and 24, 2019, in the above-referenced docket.

Sincerely,


Jill K. Mulligan

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

HEARING TESTIMONY OF BNSF RAILWAY

Thank you Chairman Begeman, Vice Chairman Fuchs and Commissioner Oberman for the opportunity to submit testimony and appear before you to discuss BNSF's programs around demurrage and accessorials and the efforts we undertake jointly with our customers in these important areas.

BNSF's driving purpose is to provide transportation services across our network in a manner that consistently meets our customers' expectations, and our employees work hard to realize that vision every day in the services that we offer, in our interactions with our customers, and in the way we approach the capital investment in, and maintenance of, our national network. BNSF takes seriously its obligations as a common carrier and role as a business partner to its customers, and that informs the commercial programs that we implement, including BNSF's demurrage and accessorial programs.¹

¹ As explained in BNSF's January 22, 2019 letter to the Chairman Begeman, the majority of accessorial revenues reported by BNSF are for services provided for our Consumer Products customers such as container and trailer dwell and handling inside BNSF intermodal facilities. In fact, for 2018, almost 90% of the accessorial revenue that was collected by BNSF was collected from customers in BNSF's Consumer Products business unit. Given the de minimis amount of accessorial revenue collected on regulated shipments, BNSF has largely focused its written comments on demurrage practices

BNSF uses activity-responsive fees like demurrage to promote the efficient use of railroad capacity and equipment and to preserve the operational and competitive potential of the national rail network. The Surface Transportation Board and the Interstate Commerce Commission before it repeatedly endorsed the use of demurrage charges to promote the efficient use of rail assets by individual shippers and, when such inefficiencies are incurred, defray the costs associated with the underlying activity (e.g., detaining equipment beyond free time, consuming an inordinate amount of rail yards and facility capacity). Indeed, 49 U.S.C. 10746 directs common carriers to “compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to freight car use and distribution and maintenance of an adequate supply of freight cars to be available for transportation of property.” This statutory tool for “ensuring the smooth functioning of the rail system”² becomes increasingly important in a capacity constrained environment. In the current environment where BNSF and our customers find our ability to construct rail infrastructure significantly constrained through legislative and administrative actions like the abuse of permitting authority, the efficiency imperatives that demurrage supports become absolutely critical. The limitations on our ability to expand rail infrastructure make it imperative that we maintain fluidity and achieve maximum utility from the line and terminal capacity that we do have.

In response to the Board’s April 8, 2019 decision, BNSF submitted on May 1, 2019 annual figures outlining the amount of revenue collected annually since 2016. As initial matter, it is important to put the revenues associated with BNSF’s demurrage and accessorial programs in context for the Board. The total revenue collected by BNSF in the form of demurrage and

² *Demurrage Liability*, Ex Parte 707 (STB served Apr. 9, 2014), slip op. at 2.

accessorial charges represented 1.24% of the total freight revenue earned by BNSF in 2018, with demurrage revenues representing 0.9% of that total. As can be seen in the table below, the demurrage and storage amounts in 2016 and 2017 are similarly scaled when compared to annual revenue earned by BNSF in those years.

	2016	2017	2018
Demurrage	1.02%	0.87%	0.9%
Storage	0.24%	0.23%	0.33%
Total	1.26%	1.10%	1.24%

The level of revenue BNSF collects in this area serves to highlight an important fact—BNSF does not approach demurrage as a revenue generating opportunity, but rather as an important mechanism supporting network efficiency and ensuring that the network can function efficiently in the interest of all our shippers.

For BNSF, the starting point of our partnership with our customers is a shared interest in creating a fluid operation at all points in the route of movement, including the points of origin and destination, and those assumptions underpin our approach to the commercial marketplace. When service interruptions occur on our network, we react quickly and work hard to restore consistent throughput, and we see our customers do the same at their facilities. Because of that joint interest with our customers in working to protect an efficient and competitive service product, the inefficiencies associated with disruptions are not built into the system as an assumed cost. Instead situation-responsive tools like demurrage fees are used to address the outliers when it comes to overconsumption of common rail facility and equipment in the manner contemplated in STB case law.

As discussed in more detail below, BNSF has invested significantly in providing customers with a number of interface options and online tools for managing flows of traffic for the express

purpose of avoiding inefficiencies, including in loading and unloading that can lead to demurrage charges. In addition, a significant number of resources, including online demurrage tools for customers, are put against ensuring that the situations that warrant demurrage are the ones that are being addressed through BNSF's billable charges. Every demurrage bill issued represents an opportunity to obtain an efficiency important for the customer and the network. In that same regard, when delays or other inefficiencies are caused by the rail carrier, eliminating demurrage charges for any impacted shippers advances the same efficiency objectives of demurrage by creating incentives for the railroads to act efficiently or bear associated costs. BNSF's practice is to excuse demurrage charges under such circumstances. As detailed further below, BNSF's demurrage team takes steps as part of its internal pre-issuance review and post-issuance review with customers to identify instances of railroad fault and make appropriate adjustments.

Rules around demurrage fees should be clear and easy to apply, offering transparency around the triggering circumstances and repeatability of processes associated with their applications and collection, with an opportunity for customer feedback around the appropriate handling of individual circumstances. With that purpose in mind, BNSF undertook a significant review of BNSF's demurrage rules tariffs with a goal of transparency, simplicity and predictability many years ago. Since that time, BNSF's general rules around carload demurrage have been fairly static. As a result, changes in the amount of demurrage and accessorial revenue collected by BNSF are significantly tied to changes in volume and the mix of traffic tied to that volume, and not to significant changes in the demurrage and accessorial rules. The focus of BNSF extensive internal efforts has been instead on developing the tools and supporting processes to avoid the triggering circumstances that warrant application of demurrage charges.

Simply put, BNSF puts a tremendous amount of energy and resources, into the area of demurrage and storage for the express purpose of collecting less demurrage revenue. Those efforts are concentrated in two key areas. First, there is the pre-billing period during the route of movement, when customers can access tools for planning and managing their traffic on our network, providing key opportunities to avoid demurrage. Second, there are the post billing tools and processes designed to provide transparency around the billing of demurrage charges and provide easy access to dispute tools and timely resolution. I would like to take moment to describe some of those efforts in more detail:

- **Customer Communications.** BNSF communicates regularly with our customers in order to provide transparent, actionable information so that they can make decisions about their business. Any emergent issues are communicated in real time via customer notification emails that describe the issue, impacted regions and facilities to the customer and expectations for resolution.³ BNSF also provides a general bi-weekly update tailored to each business unit's customers that provides overall information on the state of our network and service levels. These network-wide communications are supplemental to the daily in person-to-person interaction by our Sales & Marketing team with their customers, including 24-hour support from our Customer Support.
- **Customer eTools to Manage Flows.** BNSF makes available to customers on our BNSF.com portal a suite of tools that provide for ordering and release of equipment, tracing individual shipments in real time as they move across the BNSF network, payment of bills and other administrative activities. Within that suite, Rail Central allows customers to create highly specialized reports covering their shipments, including daily and hourly reports on the status of shipments. These tools allow our customers the necessary visibility to plan their business, understand the performance of individual movements across the BNSF system, and manage shipments throughout the route of movement. These tools provide information during the pre-billing period critical to addressing a significant root-cause of destination bunching—when more railcars than can be received at the destination are being released into the BNSF system in a short period of time, often from multiple origins. Pipeline management by the

³ When more significant service interruptions are experience, like the current flooding, BNSF will create specialized communications portals like the Midwest Flooding Recovery Effort webpage (<http://www.bnsf.com/news-media/floodrecovery.html>), which contains updates on impacted areas and BNSF mitigations actions as well as helpful customer links, like freight diversion requests and customer facility impact reporting.

receiver is key—without it, a receiver can set themselves up for a demurrage charge on a shipment even before the car hits BNSF’s network. BNSF’s eTools provide real time information about all shipments destined to a receiver and highly customizable reports and notices can be generated to push information at various points in the route.

- **Internal review prior to billing.** BNSF independently undertakes a rigorous review of demurrage pre-bills to ensure that billing is occurring in appropriate circumstances before a bill ever leaves the building. Central to that is determining whether railroad performance contributed to demurrage. This involves reviewing performance data for high levels of dwell in a serving yard, day-of-week service parameters, missed switches, and understanding significant events like flooding. BNSF employees assigned by region and equipment type perform this task, with activities ranging from mining railroad performance data to talking to local operations to speaking directly to the customer to understand the situation on the ground. We routinely make downward adjustments to reflect when demurrage was caused or impacted by railroad service issues.
- **Customer Demurrage Management Tool.** Included within BNSF’s eTools is a one-stop shop for customers to manage demurrage events, the Customer Demurrage Management Tool or CDMT. Created to support post-billing demurrage activity by customers, the CDMT allows a customer to review all demurrage charges on its account and underlying operational details such as time of actual and constructive placement. Within the tool, customers can dispute charges, track communications with members of BNSF’s equipment teams, provide additional information, and track ultimate resolution. In addition to supporting core post-billing activity, the CDMT also allows a customer to see estimated demurrage charges as they accrue in near real time on live movements and dispute such charges in the previous-billing period, allowing for resolution of disputes even before a bill is issued. While the CDMT is the most efficient platform for managing and reviewing demurrage charges, BNSF ensures cross-functional coordination, supported by internal technology solutions, to ensure that demurrage issues raised by customers with our marketing, local operations and customer support teams get addressed in a timely manner.
- **1:1 Individualized analysis and support.** BNSF’s equipment and marketing teams also perform deep dive analyses and present highly individualized studies for customers to assess root causes and assist with critical pipeline management. These interactions provide meaningful opportunities for receivers to understand the circumstances contributing to demurrage at their individual facilities and make better choices about pipeline management and internal asset and capacity management. In many cases, customers can identify simple changes in how they handle ordering with their various suppliers, more efficient use of available industrial track or targeted investments in their facilities, and eliminate all demurrage exposure.

BNSF understands the value of transparency and meaningful engagement around the application of balanced demurrage and accessorial rule, and continue to implement new programs, processes and technology to support that ongoing dialogue.

Conclusion

Central to our approach with our customers is a common interest in efficiencies that can be gained across the entire transportation route, including the first and last mile of a railcar shipment. Every demurrage bill collected is a missed opportunity to obtain an efficiency at the origin and destination important for the customer and the network and that guides the significant efforts we undertake with our customers to find ways to avoid demurrage charges. We have had much success working directly with our customers to manage rail inventories to obtain reduced dwell times in support of increased throughput and system fluidity, and ultimately, better, more reliable service across our network to all our customers.