



The Resource for Warehouse Logistics

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November 4, 2019

Honorable Chairman Ann Begeman
Honorable Vice Chairman Patrick Fuchs
Honorable Board Member Marty Oberman

Surface Transportation Board
395 East Street, SW
Washington, DC 20423

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November 4, 2019
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Re: Docket No. EP 757 and Docket No. 759

Dear Honorable Chairman Ann Begeman, Honorable Vice Chairman Patrick Fuchs,
Honorable Board Member Marty Oberman:

We sincerely thank the Board for taking a genuine interest in investigating unreasonable demurrage practices and accessorial charges.

After two days of hearings, it became very obvious that the current demurrage system, with all of its additional charges and fees and all of its additional systems, inherent problems, and inadequacies, is not a good, fair, or reasonable system.

It is obvious that the Board, through the hearings (primarily representing more than 10,000 businesses affected by the railroads), was very troubled by the number and depth of the problems railroad customers are having with the railroads. This was not a vice-versa situation: It was again obvious that the railroads were not complaining about their customers abusing the railroads. In fact, the railroad representatives were struggling to justify their actions in the face of overwhelmingly problematic policies. We believe that below is the basis of the Board's findings. This is actually a statement from the past that seems pertinent again.

General principles recognized in past decisions include: that a rail carrier seeking to collect assessed demurrage charges must provide evidence to establish the dates of actual or constructive car placement and release and to show how the assessed charges were computed;¹⁵ that a rail carrier may not collect demurrage when it is responsible for the delay;¹⁶ and that the shipper or receiver must establish by competent evidence that the assailed charges are unlawful based on the claims it has asserted.¹

¹ (*N. Am. Freight Car Ass'n v. BNSF Ry.*, NOR 42060 (Sub-No. 1), slip op. at 8 (STB served Jan. 26, 2007), *aff'd sub nom. N. Am. Freight Car Ass'n v. STB*, 529 F.3d 1166 (D.C. Cir. 2008. Docket 757 Decision - page 6).

It's obvious from all the testimony that the railroads have totally ignored this earlier recognized decision as they continuously file for additional charges. This, therefore, forces the shipper/receiver to defend itself against frivolous and sometime fraudulent charges (where the railroad did not check its work against past findings and still bills the shipper/receiver or something that did not happen). Through the testimony, this is again a problem in almost all cases.

The Board did not take any action to assure that this would not happen in the future. Nor did the board outline any rights for the Shipping and Receiving customer to appeal to the STB – other than to complain. The railroads can establish their own tariffs and bill accordingly. The Shippers and Receivers have not been given any rights to recover their expenses when the railroads bill in error or bill unwarranted accessorial charges. This is wrong and needs to be corrected. The new decision still has not corrected this issue. In any case, third-party warehouse operators and their shipper customers would prefer that railroads simply provide good service and stop blaming/billing others: This would make the above moot.

Your proposed rules will force the railroads to at least provide documentation, but this does nothing to stop the abusive charging. If there is no penalty or consequence for doing wrong, wrong will continue. (The counter to this is that you cannot have entities representing up to 10,000 corporations complaining about the abusiveness of the railroads without their being validity to their complaints.) The complaints will still have to be processed by the Shipper/Receivers; the STB staff will still need to review and try to mitigate these complaints; and, when all that fails, the courts will have to intervene, just like what happens now.

We, the railroad Shipping and Receiving community, just want to be able to do the best job for our customers – the nation's retailers and manufacturers. The railroads are doing a terrible job of participating in the supply chain, serving their customers, serving their customers' partnering businesses, and ultimately serving America's consumers. Their job is simple, get the cars to point A, from point A to point B, and back into the car pool. The Shipper/ Receiver's job is also simple: When the car comes to your door, load or unload it and release it back to the railroad. When the car is in your work parameter, you are responsible for fulfilling your promises within reasoned and communicated rules. Why does it need to be so complex and difficult? If the car is within "your responsibility" you cannot charge somebody else.

Apparently, the Board did not want to address "Actual Placement." The railroads seemingly do not want this, but this is the only solution that will make 90 percent of the issues go away. WHY do the railroads (and seemingly the STB) not want 90 percent of

the issues to be solved? When we reviewed the transcripts of the testimony, it was the answer to almost every situation and certainly addresses actual (vs. contrived) damages for demurrage. Actual Placement also solves the railroads' dwell time issues because it primarily puts the control in their hands to work with (vs. against) their own customers.

The International Warehouse Logistics Association appreciates having an avenue, like the STB, to help solve its members' issues with the railroads. It's obvious that the Board has an extremely difficult job and that you care about getting it right. You have a great desire to reach good and fair decisions. The STB staff is excellent and has been very helpful. We just wish that the railroads would provide better service. We need them (and the STB to force them) to up their game in the supply chain and we need a lot more of and from them.

It is our belief that railroads would be a lot more profitable if they did act as more of a partner. The railroads' dependability and charging systems are forcing suppliers to go to other avenues that are more dependable and faster (and most of the time, more expensive). Ultimately, this really hurts the United States as a nation and greatly impacts consumers, who receive almost all of their goods via America's supply chain.

Thank you for your understanding, your time and your hard work. You are appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. DeHaan', with a long horizontal line extending to the right.

Steve DeHaan, CAE
President and CEO
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