

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Docket No. EP 757

POLICY STATEMENT ON DEMURRAGE AND ASSCORIAL RULES AND CHARGES

Notice of Proposed Statement of Board Policy

**COMMENTS FROM THE PRIVATE RAILRCAR FOOD AND BEVERAGE
ASSOCIATION (PRFBA)**

First and foremost, we would like to thank the Surface Transportation Board (Board) for the extensive work it has put into this matter, not only into the creation of these decisions but into the hearing itself.

PRFBA supports the policy statement and the use of a policy statement versus binding rules as the right solution. PRFBA believes it provides a clear guideline for the railroads and shippers to base future negotiations and resolve disputes. PRFBA would ask, however, that the Board provide a methodology for disputes to be quickly and easily resolved by the Board rather than the current, lengthy and expensive demurrage dispute resolution process. I believe the critics of this policy statement would be silenced if the Board were to take this one additional step.

Much of the impetus behind having the demurrage hearing was created by the recent drastic changes in the rules, especially the reduction of free time. PRFBA again thanks the Board for agreeing with shippers' views and for being troubled by the impacts of the reduction in free time.

PRFBA also applauds the Board's additional comments and concerns stated on page twelve (12) about how these changes may jeopardize the use of the rail network in this country.

PRFBA respectfully asks the Board to add some clarity to footnote thirty-three (33) where you note that the demurrage programs that do not provide credit days for private cars may be reasonable. This is an area that concerns PRFBA members deeply. PRFBA members maintain that the investment in cars and the daily cost of those privately owned and operated cars is enough motivation for the car owner to ensure that cars are moving through the network as quickly and as efficiently as possible. Railroad detention or demurrage charges on a private car only adds additional expenses that the private car owner already has to bear when the railroads are not moving efficiently or when warehouses are not unloading cars promptly. PRFBA asks the Board to reconsider the concept that "private cars not be assessed any demurrage charges" and that the railroads only apply a market competitive storage charge to car owners, if those private cars are on railroad property and stored for a period of more than 48 hours.

The second note regarding footnote thirty-three (33) would be to further expand your thoughts on your final sentence, "if they give shippers and receivers a reasonable window of time to accept incoming cars without incurring demurrage charges". Once a car reaches a serving yard, even if the shipper or receiver does not "call in" or allow the placement of cars on the shipper's or receiver's property, the railroad's assessed demurrage or detention charges begin to accrue. Although, the thought of having credit days or free days eliminated, if the railroads are willing to hold cars in a serving yard until the shipper or receiver is ready to actively use the car, may have some merit, it would only be acceptable if holding the cars in the yard would be at no charge. Without that exception, PRFBA does not see any other way that providing a "no credit day" policy would be reasonable.

Additionally, on page twelve (12), footnote thirty-five (35), the policy makes reference to circumstances within a shipper's or receivers' reasonable control which includes rightsizing facilities, etc. PRFBA believes this may be reasonable provided that the shippers' operations, hours of service, receiving capacity, etc., was not changed or impacted by changes that a railroad made to its operating model. For example, under PSR, many railroads have increased delivery days to seven days a week. The question of whether it's reasonable to receive cars seven days a week because it's more efficient for the railroad, does not consider, if in fact, it is beneficial for the receiver. Likewise, if a railroad operating model causes more cars to be delivered for on each switch, but actual switches would happen less often, should facilities be expected to expand their receiving capacity because the railroads have changed their operating model? Both of these additional notes on page twelve (12), need some further clarification and consideration from the Board.

On page thirteen (13), the opening paragraph again introduces the idea of free time being eliminated and how that might be justified. PRFBA asks that the Board spend some additional time reviewing, with industry experts, the statements that were made in this paragraph. The first statement suggests that "advances in technology or productivity or other changes across the industry have made compliance with shorter timeframe reasonable." PRFBA believes the primary contradiction here is the efficiency gains generated by the railroad and for the railroads may not be efficiency gains for the shippers or the receivers. Therefore, asking shippers and receivers to change their practices accordingly may not be in their best interest. Secondly, do shippers and receivers have the required capital to keep up with the railroad changes? Is it reasonable to expect that shippers and receivers must invest capital just to keep pace with

railroad efficiency changes? If not, should these rail customers be penalized with punitive charges that they cannot avoid or have rail service stopped?

Number three (3) in that same paragraph suggests that reductions of free time may be necessary to address systemic problems, and PRFBA agrees, as long as the railroads can show that those systemic problems are driven completely by the action of shippers and receivers.

Number four (4) addresses the fairness of railroads reducing free time for events of service variability and bunching. Although PRFBA agrees that this reduces the need for additional credit days, the reduction of free time to zero under any condition is unreasonable. Even with efficient railroading providing on-time service, it still requires manpower and some amount of time to perform an unloading process. Zero free time to unload is simply not achievable.

On page sixteen (16), paragraph three (3), the Board addresses the issue of invoicing and information required in the invoicing process of detention and demurrage charges. The Board's grasp of the specifics in this area is excellent, and PRFBA appreciates very much these conclusions. However, PRFBA would ask for a small addition to the statement on Page seventeen (17) directly following footnote fifty (50) that "the board also expects rail carriers to bill for demurrage only when...". In this case, PRFBA would suggest that the Board add the words to that sentence "and only when no railroad service failure is involved in the movement of the cars listed on a demurrage bill, or any other cars delivered on that same day."

On page eighteen (18), paragraph three (3), the Board speaks about reciprocity. Again, PRFBA appreciates the STB's focus on the fairness of the current process and the thought that reciprocity may be an important element of making it reasonable.

On page nineteen (19), paragraph two (2), the Board address the commercial fairness of how the railroads provide notice for major changes in tariffs. PRFBA strongly supports a notice period of no less than sixty (60) days.

In conclusion, the policy statement presented herein will go a long way towards creating a reasonable balanced approach to the application of demurrage and accessorial charges by the railroads and will allow shippers to maximize the use of this country's railroad networks.

Prepared October 30, 2019 by:

Herman Haksteen
President,
Private Railcar Food and Beverage Association, Inc.
hhaksteen@prfba.org