



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

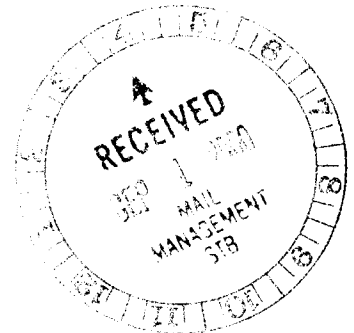
GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

189641

September 1, 2000

Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Docket No. 42052

Dear Secretary Williams:

Enclosed herewith are the original and ten copies of the Reply Comments of the United States Department of Transportation (DOT-2) in the above-referenced proceeding. There is also an additional copy that I ask be date-stamped and returned to the messenger submitting these documents.

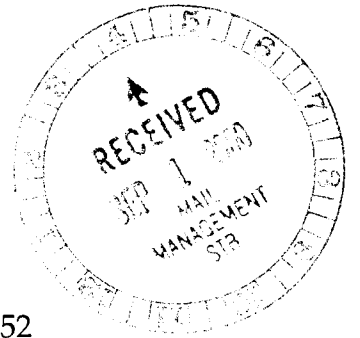
Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

Enclosures

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Before the
Surface Transportation Board
Washington, D.C.



Union Pacific Railroad Company)
- Declaratory Order -) Docket No. 42052
Unilaterally Imposed Interchange Charges)

**Reply Comments of the
United States Department of Transportation**

Introduction

The interchange of rail cars is an important means by which railroads in the United States provide their customers with access to markets or suppliers across the country and to ports. Timely interchange is essential if the national railroad system is to provide efficient, reliable service. Unfortunately, in recent years shippers have justifiably complained about poor rail service, brought about at least in part by untimely interchange. By instituting this proceeding, the Surface Transportation Board ("STB") has therefore properly determined that the interchange issues presented herein have significance far beyond a simple tariff dispute between two railroads. Decision served June 13, 2000. These issues raise central questions regarding how to assure the timely and efficient interchange that is in the public interest when the carriers involved may have different objectives or needs, and may even be competitors.

The United States Department of Transportation ("Department" or "DOT") takes no position on the merits of the central legal question posed in this proceeding: whether a railroad may unilaterally impose charges related to the interchange of rail cars. DOT is far more interested in resolving the underlying problem of untimely interchange and the congestion it causes. We believe that if current legal circumstances prohibit charges like those imposed by the Indiana Harbor Belt Railroad Company ("IHB") and others, the Board should prod the industry to reach an effective and equitable resolution. If this proves unfruitful, the STB should consider what steps it could take that would allow for the imposition of charges or other incentives to avoid delays.

Background

In recent years, interchange delays have increased as various railroads have experienced service problems due to mergers, weather, or other causes. See Comments of IHB, Verified Statement ("VS") of Charles H. Allen at 6; Comments of Iowa Interstate ("IAIS") at 6; Comments of Wabash Central Railroad Company, C&NC Railroad Corp. and Maumee & Western Railroad Company,

VS of Spencer N. Wendelin at 2. Many of these interchange problems have been temporary, but they have nonetheless caused congestion on certain railroads and delayed service for shippers. See Comments of Corn Products International and Cerestar. The failure of Class I partners to accept cars on a timely basis has been a particular problem for terminal railroads and other small operators with limited track and/or yard space to store rolling stock. This has led to congestion and degraded service on those railroads; because of the vital role these carriers play in the nation's rail network, this has also impaired the service they provide to other railroads. Comments of IHB, VS of Allen at 6; IAIS, VS of Miller at 2; also Comments of the City of Tacoma at 1 (filed March 3, 2000).¹

In an effort to maintain fluid rail operations, reduce potential congestion, and avoid customer service problems brought about by interchange delays, a number of carriers have implemented an "interchange delay charge" to prompt their connecting partners to pick up cars that are ready for interchange in a timely manner.² The charge takes effect when an interchanging carrier fails to pick up cars following a specified period of time after it has been notified that the cars are ready for interchange.

Discussion

It is a basic principle of economics that pricing is an effective way to deal with problems related to congestion or limited resources (track and yard space, in this case). The rail industry, too, recognizes that prices can expedite car movement. For example, per diem charges encourage efficient utilization of the car fleet in order to improve overall efficiency.

The problem of delayed interchange is aggravated when the railroad that is slow to accept traffic does not bear the full cost of that action. Comments of IHB at 15; Wabash Central Railroad, *et al.*, VS of Wendelin at 5-6. In that case the consequence is that the railroad holding the cars is not compensated for the costs of congestion resulting from trains awaiting interchange. Because the costs are borne elsewhere, the railroad not accepting the interchange has that much less incentive to move those cars on a timely basis. Clearly, a charge imposed on a non-accepting railroad for the cost borne by the railroad that seeks to interchange cars would provide an incentive to interchange promptly, smoothing traffic flows through terminals and speeding rail service.

¹/ We understand that the Union Pacific Railroad Company ("UP") and the Tacoma parties have settled their interchange dispute. Nonetheless, it is important to keep in mind that interchange delays and their consequences occur in different parts of the country and warrant the STB's attention if the private parties cannot resolve matters.

²/ Among the carriers reportedly implementing this charge are the IHB, the Belt Railway Company of Chicago ("BRC"), Tacoma Rail and the Tacoma Belt Line Railroad, and the IAIS.

For the railroad network to run optimally, and particularly when track and yard capacity are limited, efficient interchange is essential. The Department believes that the most effective and economically sound way to address this type of interchange problem is a system of charges that are imposed on the railroad(s) responsible for the delay. A system of charges similar to that adopted by the IHB and other railroads in Chicago therefore seems an appropriate method.³ This system has apparently been effective in giving the affected Class I railroads an incentive to accept interchange cars in a timely manner, and has been an important device in maintaining fluid operations in and around Chicago. Comments of IHB, VS of Allen at 7 and 8. The system has also been fair because those responsible for the congestion because of untimely interchange practices are forced to bear the costs of their action or inaction.

The Department acknowledges UP's point that abuses in the level of charges or the circumstances surrounding their imposition are possible. Petition for Declaratory Order (filed February 11, 2000) at 12-14. But that is no reason to abandon the pricing mechanism, and indeed neither UP nor any other railroad seems to have challenged the amount of the charges imposed by IHB or others. We also agree with UP and others that the best solution to this problem would be one that was developed by the railroads, since it is generally in their collective and individual interests to maintain efficient interchange procedures. Rail carriers serving Chicago seem to have agreed with these points as well, at least in the past, since (through the Chicago Operating Plan Committee) they reportedly not only failed to object to such charges, but also urged IHB and BRC to reduce the amount of free time allowed before the interchange delay charge was assessed. Comments of IHB, VS of Allen at 7-8 and Exhibit F. *See also* Comments of the Norfolk Southern Railway Company ("NS") at 7-8 (the IHB charges were reasonable and served to clear congestion).

If the Board determines that under current circumstances the railroads may not legally charge these fees on a unilateral basis, the Department recommends that the STB urge the railroad industry to promptly meet and attempt to negotiate an agreed-upon approach, which could include the imposition of financial charges that would encourage the prompt interchange of cars. If the industry is unable to reach a mutually agreeable approach within a reasonable time, the Board should institute a proceeding to establish a framework within which carriers could impose reasonable charges for delay. *See, e.g.*, Comments of NS at 8-9. The charges would not be a means of providing

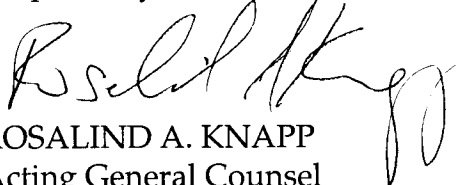
³/ Indeed, IHB notes that an "interchange delay charge" was initially implemented in the Chicago Terminal by the BRC in 1994. IHB followed shortly after BRC's implementation because of concerns that without such a charge on its system, any problems that were originally the BRC's might shift to the IHB. Comments of IHB, VS of Allen at 6. UP, which owns over 8 percent interest in the BRC, apparently has not objected to those charges.

income, but rather should be set at such a level that carriers would have sufficient incentives to promptly accept interchange.

Conclusion

Delays in the interchange of rail cars foster congestion and impede efficient and reliable service, which consequences can ripple through the nation's rail network. It is both fair and economically sound for the carriers that fail to interchange on a timely basis to pay the costs of their inaction. If the rail industry cannot reach agreement on a means to address this problem, the Board should itself take steps that would provide incentives to avoid interchange delays.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rosalind Knapp".

ROSALIND A. KNAPP
Acting General Counsel

September 1, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the foregoing Reply Comments of the United States Department of Transportation in STB Docket No. 42052 to be served upon all Parties of Record by first class mail, postage prepaid.


Paul Samuel Smith

September 1, 2000