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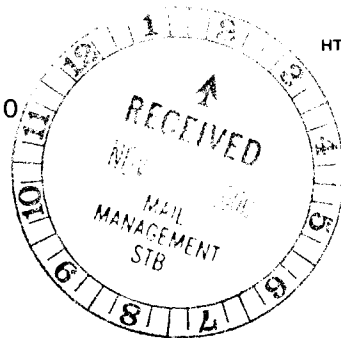
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November 17, 2000



Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Re: Ex Parte No. 582 (Sub-No. 1),
Major Rail Consolidation Procedures

Dear Secretary Williams:

Enclosed for filing are a signed original and 25 copies of the Comments of North America Freight Car Association in Response to Notice of Proposed Rulemaking in the above-captioned case. Also enclosed is a floppy disk in WordPerfect format containing the text of the same.

Sincerely,

Andrew P. Goldstein
Attorney for
North America Freight Car Association

Enclosure

APG/rmm

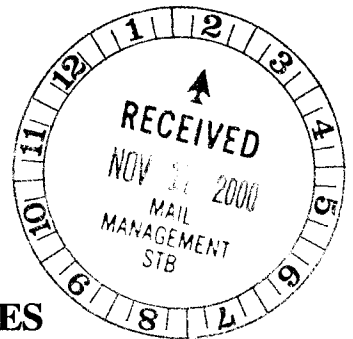
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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES



COMMENTS OF NORTH AMERICA FREIGHT CAR ASSOCIATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

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Attorney for
North America Freight Car
Association

Dated: November 17, 2000

NOV 17 2000

Part of
File # 2000-582

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

**COMMENTS OF NORTH AMERICA FREIGHT CAR ASSOCIATION
IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING**

I.

North America Freight Car Association ("NAFCA") is an unincorporated association of over 20 companies that manufacture, own, lease, or operate upward of 300,000 private rail freight cars.

II.

The sole issue which NAFCA desires to address is proposed § 1180.1(h), Service Assurance and Operational Monitoring. Although recognizing that costly service failures have followed most recent Class I mergers, the Board proposes only to require the applicants to file a "service assurance plan," including "contingency plans that would be available to address the negative impacts if projected service levels do not materialize in a timely fashion." The Board also states that it will conduct "extensive post-approval

operational monitoring" and "will require applicants to establish problem resolution teams and specific procedures for problem resolution to insure that post-merger service problems, related claims issues, and other matters are promptly addressed."

NAFCA does not believe that these procedures are adequate, or go as far as they should, to protect private car owners and operators from injury due to post-merger service failures.

Freight cars are an extremely significant asset to the railroad industry, not merely in terms of essential operating utility, but in terms of investment dollars. Fifty-four percent of the revenue freight car fleet of approximately 1,600,000 cars is supplied by non-carrier car owners, such as NAFCA members. These 860,000 or so "private" cars represent an investment of over \$50 billion in replacement value.

Non-railroad car ownership is an essential part of railroad infrastructure. Without private cars, railroad fleets would be incapable of sustaining present traffic levels. Railroads have encouraged the development of non-carrier car fleets of various car types, in some cases without any concomitant fleet of railroad ownership (e.g., tank cars and specialty covered hopper cars) and in some cases to augment carrier equipment (e.g., grain cars and coal cars).

When shippers are faced with the need to acquire private cars, the determination of how many cars to obtain, and thus of how much of an investment to make, depends heavily on the operating capabilities and practices of the railroads that will handle the

private cars. If a shipper plans on selling, say, 120 carloads of product per month, and the rail routes over which that product will travel yield 1.4 trips per car per month, a fleet of 87 cars ($120 \div 1.4$) will be necessary.

An inevitable consequence of post-merger service failures, such as those experienced to varying degrees in the wakes of the Burlington Northern-Santa Fe, Union Pacific-Southern Pacific, and CSX/Norfolk Southern/Conrail transactions, is a slow-down in the handling of freight cars. The car cycle that was 1.4 trips per month is reduced, perhaps to half that number -- sometimes less. Two things then follow: each shipper's investment in private cars is devalued (if a car cost of \$350 per month, for instance, is spread over 1.4 trips per month, the car cost per trip is \$250; if the car can only make .7 trips per month, the car cost per trip increases to \$500), and the shipper must then find alternate transportation to supplement the now inadequate car fleet if production is not to be curtailed. Alternate transportation takes the form of either supplemental private rail cars or premium truck service.

Following the last several rail mergers, when expenses have been incurred by shippers in the form of devalued private cars and the addition of supplemental car capacity, shipper claims to recover those damages have been rejected summarily in many instances, or simply ignored.

So far as NAFCA can determine, the Board has not taken the position that any segment of the shipping public should be required

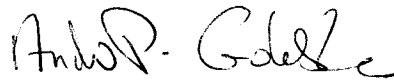
by the public interest to bear the economic brunt of post-merger service failures without recourse; and no merger seems to be worth that price to shippers. Unfortunately, the rules here proposed by the Board do little to elevate the predicament of shippers whose efforts to recover compensation have been rejected or ignored. Neither reports nor oversight meetings will correct arbitrary carrier behavior. Nor is the result under new rules likely to differ from past practices if the Board leaves it to a party to propose a remedy when the remedy is against the interest of that party.

Proposed § 1180.1 should express the principle that carriers will be fully responsible for merger-related service failures and include definite standards for the processing of claims, along the lines of the rules presently at 49 C.F.R. Part 1005, Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage. Refusals to acknowledge claims formally and arbitrary claim rejections (for such reasons as "we do not entertain this type of claim" or "this matter is not our responsibility") should not be countenanced by the rules. Each carrier should be required to process claims within a stated period of time and to provide substantive reasons for rejection (e.g., the injuries claimed have not been shown to be the result of a merger-related service failure).

The Board's regulations also can and should adopt standards to assess carrier performance. 49 C.F.R. Part 105, for example, sets forth the type of demonstration that constitutes a prima facie

showing of carrier liability for loss or damage to goods arising under the Carmack Amendment. The Board can and should adopt rules which allow shippers to make a prima facie showing of a deterioration in service by comparing pre-merger and post-merger average fleet performance.

Respectfully submitted,



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Attorney for
North America Freight Car
Association

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing pleading to be served on all parties of record by first-class mail, postage prepaid, this 17th day of November 2000.



Andrew P. Goldstein