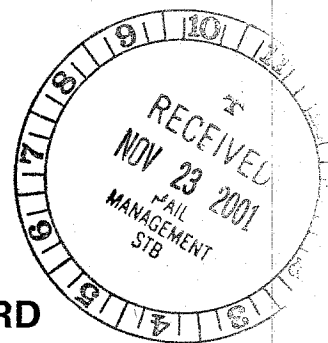


**NORTH DAKOTA
WHEAT COMMISSION**

"Quality Hard Red Spring and Durum"

203931

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Ex Parte No. 586

**ARBITRATION: VARIOUS MATTERS RELATING TO ITS USE
AS AN EFFECTIVE MEANS OF RESOLVING DISPUTES
THAT ARE SUBJECT TO THE BOARD'S JURISDICTION**

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**COMMENTS OF THE
NORTH DAKOTA WHEAT COMMISSION**

November 20, 2001

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BEFORE THE SURFACE TRANSPORTATION BOARD

Ex Parte No. 586

COMMENTS OF THE NORTH DAKOTA WHEAT COMMISSION

The North Dakota Wheat Commission is the check-off organization that represents nearly 20,000 wheat producers across our state. We are fully funded by a non-mandatory \$.01 per bushel assessment on all first sales made by producers. Since our inception in 1959 we have worked to develop and expand markets for the hard red spring and durum wheat grown in North Dakota. Transportation issues have always played an integral part in this work, as our producers need to have effective and reasonable transportation service and rates to be reliable suppliers to our domestic and international customers.

Railroads move more than 80 percent of the wheat originated in North Dakota. Alternatives are limited since there are no water outlets and our distance from major markets limits the effectiveness of trucks. Our producers are unfairly charged some of the highest rail rates on a per mile basis in the country. As such, rail rates account for nearly the entire price spread between farm-gate and export or domestic delivered values. For example, on a typical movement of wheat from western North Dakota to the Pacific Northwest, more than 90 percent of the difference between the final value at the point of export and the price received by producers is paid to the railroads. Strong competition in the grain origination and export elevator system keeps their operating margins to less than 10 percent of the farm-to-export spread.

In many cases, the producer-owned cooperatives and privately held elevators in our state are only served by one rail carrier; in essence they are captive to that carrier. This leaves a significant share of our producers vulnerable to the market power of railroads, and very receptive to a more realistic and effective system to seek relief from high rates.

Wheat produced in North Dakota has built a reputation for its quality and specialty attributes, creating a demand pull from around the world. As world competition for wheat markets intensifies and other countries attempt to emulate the quality niches North Dakota wheat has garnered, inland transportation costs are becoming a bigger variable in our ability to meet the competition. It is imperative that a realistic arbitration system be employed to allow producers and small shippers a more equal seat at the bargaining table with the larger railroads. It also makes the final decisions that will come about from comments on this proceeding critical to the future profitability of wheat production in North Dakota.

Prescribed Arbitration

The North Dakota Wheat Commission urges the Board to simplify the methods and guidelines it uses to determine market dominance or excessive revenue-to-variable cost thresholds as a first step in improving the entire relief process for small shippers. These changes are needed before small shippers can truly realize the benefits of arbitration. The lengthy "proof" process currently required make it financially burdensome, if not impossible, for small shippers to even take the initial steps in seeking relief.

North Dakota wheat producers agree with the Board's stated position that regulatory intervention should be limited to shippers that are paying rates that exceed a revenue-to-variable cost ratio of 180 percent. Proving and calculating these ratios can be costly and time consuming however and more simplified methods need to be adapted.

In addition to simplifying the procedures for small shippers to prove thresholds of market dominance or excessive R/VC ratios, definitions for small shippers need to be carefully considered. Freight volumes and values are quite different between commodities and locations, as you have stated. Bulk products such as wheat tend to have small margins throughout the marketing system. This makes it an economic necessity to ship large volumes of rail cars compared to enterprises that handle finished products. In North Dakota, a benchmark of 250 to 500 railcars per year is too low a level for the majority of our elevators. A combination of car volume and percent of a shipper's volume handled by a single Class I carrier may be more appropriate to define small shippers eligible for regulatory intervention.

We agree that different parameters will be needed for grain and non-grain commodities, as well as high-yielding crops like corn versus lower yielding crops like wheat. Regions closer to river transportation resources will also have different dynamics than North Dakota wheat. In all cases, multiple destinations must be considered for a single origin or shipper. Wheat grown in North Dakota travels to numerous domestic and export locations in a given year, depending on production volume and quality dynamics. Most elevators in our state generally ship to both export and domestic markets to optimize values for different grades and protein levels.

The North Dakota Wheat Commission agrees that binding arbitration should be used to settle rate disputes. If the final decision is not binding and either party has the right to appeal, Class I carriers would win again. The larger parties, with more financial resources at their disposal, would simply drag out any rate complaint into a lengthy appeal process if the outcome were not in their favor. This would leave small shippers in no better situation then they are now.

Legislation that has been proposed to provide for final offer arbitration in rail rate disputes has a lot of positive aspects since it would eliminate time-consuming and costly legal processes. However, we would suggest that a modified form of final offer arbitration be pursued. Arbitrators should have the flexibility to choose a compromise if the parameters of a particular case merit it. This type of final offer arbitration would still require each party to submit their best offer with the understanding that the arbitrator can select either parties offer. But it would also allow arbitrators to consider issues like market dominance and excessive revenue-to-variable cost ratios in the development of their decision.

The integrity of any type of arbitration system is linked to having fair and knowledgeable arbitrators that represent the interests of all parties. Strict rules must be adapted to select arbitrators. In all cases though, congressional oversight should still be used to ensure the system operates fairly.

The North Dakota Wheat Commission appreciates the opportunity to provide input on this matter. We urge the Surface Transportation Board to continue to be proactive in seeking the most reasonable solutions and to work closely with Congress on crafting effective legislation. The current methodology and standards available to small shippers for seeking rate relief are not realistic. Wheat producers have been valuable contributors to the U.S. economy, but the monopolistic practices employed by large Class I railroads in our part of the country are stifling that contribution. North Dakota producers and their respective shippers look forward to the development of a more effective and reliable system to seek relief from rail rates and practices deemed unfair.

Sincerely,

A handwritten signature in cursive script, reading "Maynard Satrom".

Maynard Satrom
Chairman

cc: Senator Conrad
Senator Dorgan
Congressman Pomeroy
Governor Hoeven
Ag Commissioner Johnson
ND Public Service Commission
ND Grain Dealers
ND Farmers Union
ND Farm Bureau