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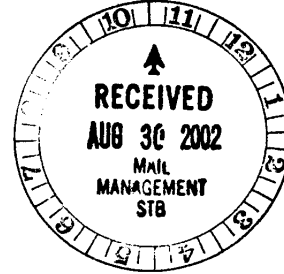
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August 29, 2002

VIA FEDERAL EXPRESS

Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-00001



RE: *Capitol Materials Incorporated Petition for Declaratory Order Certain Rates and Practices of Norfolk Southern Railway Company*
STB Docket No. 42068

Ladies and Gentlemen:

Enclosed herewith is an original and 11 copies of Capitol Materials' Incorporated's Response to the Motion of Norfolk Southern Railway Company For Leave to File Surreply." Please file this document in accordance with the procedures of your office.

If you have any questions or need further information, please give our office a call.

Sincerely,

RACHELSON & WHITE,
A Professional Corporation

Stacey L. Forristall
Paralegal

/slf

cc: Capitol Materials Incorporated
Richard A. Allen, Esq.
George A. Aspatore, Esq.
Bruce E. Mitchell, Esq.

Enclosures

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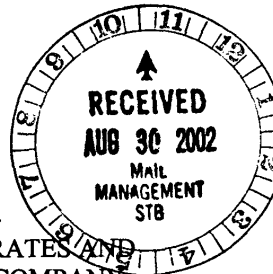
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42068



CAPITOL MATERIALS INCORPORATED-
PETITION FOR DECLARATORY ORDER-CERTAIN RATES AND
PRACTICES OF NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSE OF CAPITOL MATERIALS INCORPORATED
TO THE MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY
"FOR LEAVE TO FILE SURREPLY"

COMES NOW Capitol Materials Incorporated, Petitioner hereto ("Capitol"), and files this its RESPONSE TO THE MOTION filed by Norfolk Southern Railway Company ("Norfolk Southern") "...for leave to file Surreply", and as and for such Response, respectfully states as follows:

NORFOLK SOUTHERN'S "SURREPLY" SHOULD BE DISREGARDED

In keeping with the Board's Modified Procedure, Capitol filed its Opening and Supplemental Argument and Verified Statements; Norfolk Southern presented its Arguments and Verified Statements in opposition and Capitol filed its Reply thereto. This should have concluded the Modified Procedure but instead, in direct contravention of 49 C.F.R. § 1104.13(c), Norfolk Southern has filed what it calls a "Surreply" to Capitol's Reply.

49 C.F.R. § 1104.13(c) provides that a reply to a reply is not permitted. Nevertheless, Norfolk Southern has filed a Motion for Leave to File a Surreply, accompanied by its "Surreply." Norfolk Southern has not petitioned the Board for

waiver of 49 C.F.R. § 1104.13(c) as required by 49 C.F.R. § 1110.9 but instead has simply requested a waiver within the body of the pleading presenting its Surreply. In addition, Norfolk Southern has failed to provide any arguments in favor of granting the waiver as required by that Regulation other than to state that it did not address arguments Capitol raised in response to Norfolk Southern's Reply. Norfolk Southern neglects to explain how it logically could have known what Capitol's response to the arguments raised in Norfolk Southern's Reply would be before Norfolk Southern submitted its Reply. Norfolk Southern would have preferred to reply not only to Capitol's Opening and Supplemental Arguments and Verified Statements but also to Capitol's Response to Norfolk Southern's Reply. However, this is not permitted under the applicable Regulations.

Norfolk Southern's Motion attempts to skirt around both the applicable Regulations and logic by presenting its "Surreply" within the body of its Motion for Leave to File. The "Surreply" offered by Norfolk Southern should be disregarded.

CAPITOL'S RESPONSE TO NORFOLK SOUTHERN'S SURREPLY

If, however, the Board chooses to accept Norfolk Southern's "Surreply," Capitol provides the following Response:

In its "Surreply," Norfolk Southern argues that Capitol has presented evidence and argument raised "for the first time in reply" (Surreply, Page 1) relating to:

- (A) whether and to what extent Capitol has provided timely notice of objection to the demurrage billings ("Surreply," pps. 2-6)¹ and

¹ This will be hereafter referred to as the "course of dealing" issue. (See Norfolk Southern's Surreply, Pages 3,5).

- (B) six (6) specific issues related to the Application of Average Demurrage Agreements and the related tariff interpretations. ("Surreply," pps. 6-10)

Despite Norfolk Southern's arguments to the contrary, all of the evidence and argument advanced by Capitol in its Response to Norfolk Southern's Reply Statement are directly responsive to matters advanced by Norfolk Southern in its Statements in opposition. Further, this evidence and argument originated with the Initial Statements and Argument of Capitol. The "Surreply" of Norfolk Southern should be disregarded and its Motion for Leave to File should be summarily denied.

I.

THE PARTIES' "COURSE OF DEALING" REGARDING
THE ASSESSMENT OF DEMURRAGE HAS BEEN ARGUED
THROUGHOUT THIS PROCEEDING AND DOES NOT CONSTITUTE
"NEW" MATTER WARRANTING THE FILING OF A SURREPLY

Norfolk Southern takes the position that the arguments raised in Capitol's Reply concerning the "course of dealing" between the parties, that is, the arguments that Norfolk Southern and Capitol established a long course of dealing regarding the assessment of demurrage charges and claims for relief from those charges and that Norfolk Southern and Capitol mutually departed from or waived the requirement that written claims be submitted, were not raised in "Capitol's opening submission or supplemental opening submission." ("Surreply," p. 1). This is simply incorrect.

Far from constituting "new" matter, Capitol presented evidence of the course of dealing between the parties in the initial Verified Statements submitted by its Affiants as shown by the following excerpts from those statements:

- Capitol's position on this matter has been repeatedly communicated to and discussed with a progression of NS representatives over the years. (Initial Verified Statement of Jeff Traicoff, hereinafter "Traicoff Statement" p. 2.emphasis added).
- Capitol continually advised Norfolk Southern of these problems through telephone conversations with various Norfolk Southern personnel." (Traicoff Statement, p. 6, emphasis added).
- This lawsuit was filed in July, 2000. In the months immediately prior to that time, Capitol had numerous discussions with Norfolk Southern objecting to the demurrage charges. Previously, these demurrage bills had simply 'gone away'. (Traicoff Statement, p. 6, emphasis added).
- I called our Norfolk Southern contact, Roy, at South Yard to inquire what the documents was and he stated '...don't worry about it' (Traicoff Statement., p. 6, emphasis added).
- Capitol has repeatedly brought these matter to the attention of NS but its position is that Capitol does not qualify for bunching relief under its unilaterally promulgated tariff rule.... (Traicoff Statement, p. 9, emphasis added)
- Capitol has repeatedly advised Norfolk Southern of this failure to meet even rudimentary service standards." (Traicoff Statement, p. 9, emphasis added).
- Capitol has experienced numerous instances when railcars have arrived at the yard, but Capitol cannot get delivery of the railcars simply because Norfolk Southern does not timely perform delivery. . . Literally hundreds of such examples exist and quite candidly, Capitol has found that these CP notices now are issued regardless of space availability for the cars." (Traicoff Statement, p. 10, emphasis added).
- Capitol has repeatedly asked Norfolk Southern why it received constructive placement notices on cars that were held by Norfolk Southern and were bunched by the railroad at its yard, but were not timely delivered to Capitol. All of these complaints have been made orally by me, but I have located one instance where I put this type of complaint in writing to Steve Marshall. . . I received no response to this communication." (Traicoff Statement, pps. 10-11, emphasis added).

- [The] first Constructive Placement Notice ("CP") we ever received was in mid-1999 . . . As a point of fact, we had open spots on the very days we received these faxes. . . they [Norfolk Southern] know we have space available, and for whatever reason they simply do not and can not get us the cars.
(Verified Statement of Tom Mueller, hereinafter "Mueller Statement," p.2)
- All of this has been repeatedly communicated by me to our Norfolk Southern representatives, including Stewart Dunn, Bill Holden, Alan King, and Judy Owens. . . In years past we were often told to simply ignore the bills.
(Mueller Statement, p. 3, emphasis added).

In its "Surreply," Norfolk Southern intentionally ignores all this evidence in order to get another bite of the apple - another chance at arguing against Capitol - despite the fact that the applicable Regulations forbid this.

In its "Surreply," Norfolk Southern states that "for the first time in its Reply, Capitol asserts a history of 'continuous protest' and 'continuous oral complaints'." ("Surreply," p. 3). Norfolk Southern is simply advancing this position as a pretext for submitting a reply to a reply in violation to the rules of the Board's Modified Procedure.

Norfolk Southern's position that Capitol first raised arguments concerning the fact that Norfolk Southern and Capitol established a long course of dealing regarding the assessment of demurrage charges and claims for relief from those charges and that Norfolk Southern and Capitol mutually departed from or waived the requirement that written claims for relief be submitted in its Response to Norfolk Southern's Reply Statement is specious.

Further, this position contradicts Norfolk Southern's own Verified Statements submitted in opposition to Capitol's Response, specifically the Verified Statements of Stephen B. Marshall and Carolyn Woods, where Norfolk Southern attempted to advance

evidence and argument that the parties had established a long course of dealing regarding the assessment of demurrage charges and as a result the requirement that written claims for relief be submitted had been waived.

Norfolk Southern even summarizes the evidence it submitted in its Reply Statement in pages three and four of its "Surreply." In other words, Norfolk Southern submitted responsive argument and evidence to Capitol's argument that a course of dealing had been established between the parties regarding the assessment of demurrage damages which resulted in the waiver of the requirement that written claims for relief be submitted in both its Reply Statement and Verified Statements and now again in its "Surreply."

Aside from improperly seeking another "bite of the apple," Norfolk Southern's "Surreply" is a transparent attempt to completely distort the time frame within which the statements concerning the "course of dealing" took place. The uncontroverted evidence is as follows:

- The demurrage charges which are the subject of this proceeding commenced in 1997;
- These charges were not paid nor were they re-billed and collection efforts by Norfolk Southern arose for the first time in 1999;
- Only in 1999, did Norfolk Southern state its position concerning these charges, and only during the flurry of meetings that occurred shortly after collection efforts were initiated; and
- This lawsuit was initiated shortly thereafter in 2000.

Despite these uncontroverted facts, Norfolk Southern, in its "Surreply" and throughout this procedure, has attempted to conflate and distort the time frame within which the course of dealing between the parties occurred. For example, on page four of its "Surreply," summarizing evidence previously submitted in its Reply Statement, Norfolk Southern states that its Affiant Stephen B. Marshall pointed out to Capitol that Norfolk Southern "had no record of any factual dispute with your company since before 1997." The simple reason that Norfolk Southern has no record of any factual dispute with Capitol from before 1997 is explained by the uncontroverted facts set forth above: Norfolk Southern did not begin assessing demurrage charges until 1997. In addition, and as set forth above, there was no "factual dispute" in 1997 or 1998 because Norfolk Southern did not re-bill its earlier demurrage assessments and did not attempt to collect those assessments.

As further explanation why there was no factual disputes in 1997 or 1998, Capitol was specifically told by "Roy," Capitol's contact at Norfolk Southern, who, notably, Norfolk Southern did not produce, to disregard the bills associated with the assessment of demurrage charges. (See, Verified Statement of Jeff Traicoff, p. 4). There is simply no evidence from either party that before 1999 any representative of Norfolk Southern advised Capitol that it must file a formal written claim for relief from demurrage charges and shortly thereafter Norfolk Southern filed this lawsuit.

Capitol raised its argument that a course of dealing had been established between the parties regarding the assessment of demurrage damages which resulted in the waiver of the requirement that written claims for relief be submitted in each pleading it has submitted to the Board since the inception of this Modified Procedure. Norfolk Southern

has responded to this argument in its Reply Statement, as demonstrated by Norfolk Southern's use in its "Surreply" of summaries of evidence it previously submitted. In fact, in Norfolk Southern agrees that "the actual course of dealing in this regard is well documented" ("Surreply," p. 3). Norfolk Southern's attempt to further reply represents a clear and patent abuse of the Board's procedures which should not be countenanced.

II.

ALL EVIDENCE AND ARGUMENT REGARDING TARIFFS AND THE AVERAGE DEMURRAGE AGREEMENTS SUBMITTED BY CAPITOL IN ITS RESPONSE TO NORFOLK SOUTHERN'S REPLY STATEMENT IS DIRECTLY RESPONSIVE EVIDENCE AND ARGUMENT ADVANCED BY NORFOLK SOUTHERN IN ITS STATEMENT AND OPPOSITION

In its "Surreply," and in an equally transparent attempt to simply submit further argument in violation of 49 C.F.R. § 1101.13(c), Norfolk Southern responds to six (6) separate categories it states Capitol has raised for the first time in its Response to Norfolk Southern's Reply Statement. These categories are:

- the first two categories relate to the applicability of the Average Demurrage Agreements to Capitol;
- the third category relates to the assertion that Capitol received benefit from these agreements;
- the fourth category relates to the assertion that the promulgation of Item 285 does not represent a "change" such as to an amount to a "unreasonable rate practice;"
- the fifth category relates to the assertion that while "some changes" (see, "Surreply," p. 9) were made in NS 6004-A as to how demurrage is

calculated, the example provided by Capitol does not support the argument of material change; and

- the sixth and final category reargues the commencement of free time on two specific examples prompted by Norfolk Southern's Exhibit 1 attached to the Verified Statement of its Affiant Carolyn Woods (see, "Surreply," p.10).

Capitol will respond to these categories using the same numbering system utilized by Norfolk Southern.

Categories Nos. 1 and 2: Norfolk Southern submitted evidence relating to the average demurrage agreements and the fact that these agreements allegedly formed the basis for the demurrage assessments which are the subject of this proceeding. In its response, Capitol noted that (1) the agreements involve a contractual relationship only with "Southern Railway" and not the party assessing the charges, and (2) the tariff on which Norfolk Southern relies is neither a supplement nor a re-issuance of the tariff referenced in the average agreements.

This first responsive argument of Capitol originated with the fact that the constructive placement notices which Norfolk Southern contends form the alleged predicate for many of the assessments of the demurrage charges are issued by an entity, the "Norfolk Southern Corporation." This entity is separate and distinct from Respondent hereto and no affiant in this proceeding is employed by this entity and no affiant in this proceeding has offered testimony concerning this entity. Attached hereto as Exhibit "1" is a representative constructive placement notice issued by this entity.

Even setting aside the issue of the proper corporate entity, the plain and simple fact here is that the contract references an agency tariff, filed in the PHJ series, the supplements thereto and the successive issues thereof, and no tariff filed in the RPS series and the NS series is a "supplement" of the agency tariff PHJ series, nor a "successive issue" of that publication. Instead, the agency tariff, as a matter of law, is a separate and distinct publication. The fact that RPS series or the NS series may reference the agency tariff makes absolutely no difference - the contract terms are clear in requiring the operative publication to be a successive issue or supplement. The RPS series and the NS are neither and Capitol pointed this out in direct response to the allegations of Norfolk Southern's Affiant Carolyn Woods that the RPS and NS series tariffs were applicable pursuant to the average demurrage agreements

Category No. 3: In its "Surreply," Norfolk Southern next challenges the allegation that Capitol never obtained any of the "benefits" from the average demurrage agreements. It attaches as Exhibit "E" a copy of a document "dated April 28, 1998" and purported to be an "...NS demurrage bill for Capitol's Atlanta/Chamblee facility." First, the document on its face is dated April 23, not April 28; secondly, it relates not to the Capitol's Atlanta facility, but instead its Duluth facility. Capitol's Affiant Tom Mueller, the General Manager of Capitol's Duluth Facility, has testified that in 1998, and indeed for two years since 1997, not a single constructive placement notice was ever received to support any demurrage assessment, whether made under an Average Agreement or otherwise. (Initial Verified Statement of Tom Mueller, hereinafter "Mueller Affidavit," p. 2). Consequently, there can be no demurrage assessment of any kind in these circumstances and obviously no "credits" could conceivably be earned as they would be

applicable only against the demurrage assessments. At least on this record, Norfolk Southern has failed to show even the first applicable "credit" or any benefit whatsoever derived by Capitol from the assessment of any charges pursuant to the specific tariff named in its Average Agreement, or for that matter, any other tariff, whether or not supplement thereto or re-issue thereof.

Category No. 4: In its initial Petition and again in its Response to Norfolk Southern's Reply Statement, Capitol raised the issue of missed switches. In its "Surreply," Norfolk Southern responds improperly under the category of "Railroad error" to this issue of missed switches despite the fact that Norfolk Southern responded to this issue in its argument and affidavits in opposition. In its Response to Norfolk Southern's Reply Statement, Capitol pointed to a "change" from the previous tariff as representing an "unreasonable rate practice."

Now, in its "Surreply," Norfolk Southern states that Capitol's reference to Item 287 of tariff NS 6004 should correctly have been Item 285. Norfolk Southern also argues that tariff NS 6004 contained no change regarding the error of the railroad in failing to make a switch when compared to the previous tariff RPS 6004-P. Attached as its Exhibit "F" to Norfolk Southern's "Surreply" is a copy of this publication as re-numbered Item 322.

Norfolk Southern has failed to advanced whole truth in its "Surreply." Although Norfolk Southern is correct that Capitol cited the wrong tariff item in its Response to Norfolk Southern's Reply Statement, the result is the same - and there certainly is no basis for filing a reply to a reply. Specifically, Capitol's reference should have been to tariff NS 6004-A effective March 1, 2001, Item 400 (a copy of which is attached as

Exhibit "2" hereto). As Capitol's Affiant Mr. Traicoff stated in his rebuttal statement, Norfolk Southern completely eliminated its own responsibility, which it had previously assumed, for missed switches (a clear railroad error) by providing that no allowance whatsoever would be made unless (a) all cars actually placed at that point in time were released before the next switch should have been made and (b) the allowance would have been extended only against cars under constructive placement at that time.

As to the latter, and as again pointed out by Affiant Mr. Traicoff, Norfolk Southern absolutely refused to give consideration under this new rule to the so-called "domino effect" caused by missed switches. As to the former, Norfolk Southern is essentially requiring a "clear track" for missed switch credit, a requirement which never previously existed and which is obviously adverse to a user such as Capitol.

Category No. 5: In its Reply Statement, Norfolk Southern acknowledged through its Affiant Ms. Woods that "some changes" did exist in NS 6004-A. Nevertheless, Norfolk Southern alleged that these changes were essentially a matter of simplifying terminology - including the replacement of the provision providing for "free time" under NS 6004 with a provision providing for "credits" for each car under 6004-A. This material and substantial change is clearly more than a matter of "simplifying terminology."

In its Response to Norfolk Southern's Reply Statement, Capitol pointed out that the simplification of terminology attested to by Affiant Ms. Woods is far from cosmetic, but instead materially affects the calculation of chargeable days. Although Norfolk Southern is correct that in the example used by Capitol where a car is constructively placed on a Tuesday, no difference would exist in the demurrage computations, in

"Surreply," Norfolk Southern is again not telling the whole story. Rail cars which were constructively placed on Wednesday, Thursday or Friday would be treated very differently under Norfolk Southern's new allegedly simplified terminology, and Norfolk Southern should fairly have disclosed this. Specifically, a rail car constructively placed on a Wednesday under NS 6004, effective June 15, 1997, would receive free time Thursday and Friday and the assessment of demurrage charges would not commence until the following Monday because these charges accrue only on all days "...subsequent to the first debit day, including a Saturday, Sunday or holiday immediately following the day on which the first debit begins to accrue" (Item 620, tariff NS 6004 attached as Exhibit "3").

Under this former rule, a rail car subject to constructive placement Wednesday and released the following Monday, would not be subject to demurrage charges. Under the present rule (Norfolk Southern's alleged "simplified terminology"), two automatic "credit" days exist and an assessment of two days of demurrage would result. Comparable results would obtain for constructive placements on Thursdays and Fridays, because no "debit days" intervene prior to weekends and holidays when no service is provided by Norfolk Southern. (See chart attached as Exhibit "4".)

Norfolk Southern, rather than attempting to minimize the material change as being simply a matter of terminology, should fairly and properly have explained in its evidence how these changes materially alter the computation basis for demurrage. However, Norfolk Southern's failure to do so does not provide a basis for granting leave to file a "Surreply," because the Board can make such calculations in its interpretation of the Norfolk Southern's tariffs.

Category No. 6: Since the inception of this proceeding before the Board, Capitol has repeatedly and consistently used the demurrage bills it has received from Norfolk Southern as the basis for its argument that, as charged, Norfolk Southern's bills reflect its unreasonable practices. As an example, Capitol argued that it was assessed demurrage for rail cars although in the bills transmitting these charges, there was no indication of an actual placement date for the rail cars in question.

In its "Surreply," Norfolk Southern argues that its omission of actual placement dates on its billings is immaterial. Norfolk Southern provides no evidence to support this argument, which constitutes an impermissible Reply to a Reply, except to refer to previously submitted evidence sponsored by Norfolk Southern's Affiant Carolyn Woods - the very same evidence which prompted Capitol's argument. Capitol is not mistaken in its argument that it should not be assessed demurrage when there is no indication of an actual placement date for the rail cars so assessed - without the billing record of an actual placement date, it is impossible to determine whether the rail car was "buried" at the rail yard or otherwise the subject of the "run-arounds" which Capitol has repeatedly argued should fairly and properly be considered in evaluating railroad error in demurrage assessment.

CONCLUSION

Norfolk Southern's Motion for Leave to File Surreply should be denied and its "Surreply" should be disregarded.

First, Norfolk Southern has failed to comply with the provisions of 49 C.F.R. § 1110.9 in that it has failed to petition for a waiver of the rule which provides that a reply to a reply is not permitted and in that it has failed to provide a basis in favor of granting

such a waiver. Instead, Norfolk Southern attempted to conduct an "end-run" around this rule by submitting its Surreply through its Motion for Leave to File. This is an abuse of process which should not be tolerated.

Second, it is apparent that Norfolk Southern simply wants another bite of the apple and is not content to allow the modified procedure associated with matters submitted to the Board to run its natural course. Each and every one of the arguments Norfolk Southern contends were newly raised by Capitol in its Response to Norfolk Southern's Reply Statement have been raised by Capitol throughout this proceeding. There is no new material for Norfolk Southern to respond to and Norfolk Southern makes this perfectly clear by summarizing its prior argument in its "Surreply."

For the foregoing reasons and for the reasons more fully stated above, Capitol respectfully requests that Norfolk Southern's Motion for Leave to File Surreply be summarily denied as an improper Reply to a Reply and its "Surreply" be disregarded.

This 29 day of August, 2002.

Respectfully submitted,

RACHELSON & WHITE

MITCHELL & ASSOCIATES

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CERTIFICATE OF SERVICE

This is to certify that I have on this day served copies of the foregoing upon the following individuals by mailing copies of the same via first class mail U.S. Mail in properly addressed envelopes with sufficient postage addressed to:

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George A. Aspatore, Esq.
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Norfolk, Virginia 23510-2191

This 27 day of August, 2002.

Ira L. Rachelson *Express*
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EASYLINK 0602171K001 28DEC00 10:49/10:56 EST
FROM: 324187 NS 324187
TLX II 9103501949 NORFOLK SOUTHERN
NORFOLK SOUTHERN (CRN: 010)
TO: 4043513023

MESSAGE-03670867
FROM BE-COMPUTER * * *
12/28/00 10:48A

NORFOLK SOUTHERN CORPORATION
ATLANTA, GA
DECEMBER 28, 2000
10:48 AM

CAPITOL MATERIALS INC D3550
464 BISHOP STREET NW
ATLANTA, GA 30318

YOU ARE HEREBY NOTIFIED THE FOLLOWING CARS CONSIGNED TO, OR ORDERED BY
YOUR COMPANY ARE NOW AVAILABLE FOR PLACEMENT AND TENDER IS HEREBY MADE
IN ACCORDANCE WITH TARIFF NS 6004-B. WE AWAIT YOUR PLACEMENT INSTRUCTIONS
REGARDING THESE CARS.

CAR INIT NUMBER	ARRIVED DATE TIME	FROM	SHIPPER	WGT	CMDTY
<i>46062</i> CSXT 600624	1228 03A	PATRICH AL	USGYPSUM	1547	GYWBD <i>STATION 58612 CSXTFC</i>
<i>46176</i> TTX 861455	1228 03A	PATRICH AL	USGYPSUM	2044	GYWBD <i>STATION 58612 CSXTFC</i>

DIVISION MGR/ CYO /ATLANTA, GA



TARIFF NS 6004-A

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 350 NOTIFICATION TO NS:

A. When NS personnel are not on duty to receive forwarding instructions, empty release information other or other disposition, consignor/consignee will have until 0001 hours (See Car Days, item 200) of the next day personnel are on duty to furnish such instructions, and they will be considered as having been furnished at the date and time the instructions could have been furnished.

B. When electronic or mechanical devices are used to furnish notification to NS, the recorded date and time that instructions are received will govern.

ITEM 400 - ALLOWANCES PERMISSIBLE FOR RELIEF OF DEMURRAGE CHARGES:

In order to be allowed relief as indicated, a claim must be presented to NS, in writing, by the last day of the calendar month following the month in which the bill was issued, stating fully the conditions for which relief is claimed.

1. **Railroad Error:** - If, through railroad error, demurrage charges are assessed demurrage will be adjusted to the amount that would have accrued but for such error. (Run around and bunching of cars will not be considered as a railroad error.)

2. **Weather Interference:** - When because of earthquakes, tornadoes, hurricanes, floods or heavy snow, the operations of the consignor or consignee are disrupted, the demurrage directly chargeable thereto will be eliminated, provided the disruption exceeds two (2) days in duration.

3. **Strike Interference:** - When it is impossible to load or unload or receive cars from or make cars available to NS because of strike interference at the point where the loading or unloading is to be accomplished, demurrage days will be charged for at the rate of \$30.00 per day during the period of strike interference, provided:

(a.) The disruption exceeds five (5) days in duration during one calendar month.

(b.) The provisions of this item will not apply to: - (1.) Cars for unloading when waybills are dated four (4) days after the beginning of strike interference. (2.) Cars for loading when ordered after the beginning and prior to the ending of strike interference.

4. **Switching Delays:**

(a.) This allowance will be calculated and deducted from car days for car ordered and all others held under constructive placement when all cars on the patron's siding are empty and available at the time a switch is missed or should have been made. If all cars on the patron's siding are not empty at the time of alleged switching failure, allowance will be for the car so ordered and not placed.

(b.) When a car is ordered for placement or delivery and this is not accomplished because non-service, allowance will be given for delay in placement. This allowance will apply to the car ordered placed, when held under constructive placement on NS tracks.

(c.) The allowance day(s) will be deducted from the Car Days for all day(s) after which the placement order was given to, but not including, the day on which the car is actually placed.

(d.) For example, if a car is ordered placed on day 3 of the month, but not actually placed until day 5 of the month, day 4 of the month will be an allowance day and not a chargeable demurrage day for that car and all cars held under constructive placement on NS tracks during that time.

ITEM 450 - CARS AWAITING CUSTOMS INSTRUCTIONS PAYMENT OF DUTIES:

Cars delayed on carriers' tracks longer than forty-eight (48) hours, awaiting completion of customs documentation or payment of duties, will begin to accrue normal demurrage charges.



DEMURRAGE CHARGES ON CARS SUBJECT TO AVERAGE AGREEMENT (See ITEM 625)

On cars subject to the average agreement, after expiration of free time, or the adjusted free time in ITEMS 1200 through 1235 (see Note 1), the following charges per car per day, or fraction of a day, will be made until car is released:

\$20.00 for each of the first four debit days.
\$30.00 for each of the next two days.
\$60.00 for each subsequent day.

The applicable charge will accrue on all Saturdays, Sundays or holidays subsequent to the first debit day, including a Saturday, Sunday or holiday immediately following the day on which the first debit begins to accrue. Charges which accrue after the fourth debit day may not be offset by credits.

EXPLANATION OF NOTES

Note 1. Cars subject to the average agreement will not be allowed adjustments provided for in ITEM 1210 and Paragraphs 1 and 2 of ITEM 1220, except when bunching has been caused by floods, earthquakes, hurricanes or tornadoes and conditions in the devastated area resulting there from, or strikes of railroad employees, and cars are subsequently delivered to consignee in accumulated numbers.

ITEM 625

MONTHLY COMPUTATION OF DEMURRAGE CHARGES

At the end of each calendar month, the total number of credits will be deducted from the total number of debits and \$20.00 per debit will be charged for the remainder (see Note 1). If the credits equal or exceed the debits, no charge will be made for the detention of the cars except as otherwise provided in ITEM 620 for detention beyond the fourth debit day. No payment will be made by this railroad on account of such excess credits; nor shall credits in excess of the debits of any one month be considered in computing the average detention for another month.

For the purpose of this item, the end of the calendar month shall be considered as closing at the first 7:00 A.M. of the following month.

EXPLANATION OF NOTES

Note 1. In the event of a rate change which causes debits and credits to have difference liabilities and values, each debit and credit will be converted to the monetary value in effect on the day such debit or credit accrued. At the end of the calendar month the total value of credits earned will be deducted from the total liability of the debits accrued in the above prescribed manner.

ITEM 630

SECURITY

A party who enters into this average agreement may be required to give sufficient security to this railroad for payment of balance against him at the end of each month.



ANALYSIS OF TARIFF CHANGES - DEMURRAGE CALCULATIONS

						Released	Released	Released
	Wed.	Thurs.	Fri.	Sat.	Sun.	Mon.	Tues.	Wed.
1.	CP					0	1	2
2.	CP					2	3	4
1.		CP				0	0	1
2.		CP				1	2	3
1.			CP			0	0	0
2.			CP			0	1	2

1. Former tariff
2. Present tariff

EXHIBIT "4"