

December 31, 2007

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E St. S.W.
Washington, D.C. 20423

RE: Ex Parte 385 (Sub-No. 6), *Waybill Sample*, decision served December 17, 2007

Dear Secretary Williams:

This is a letter-petition for reconsideration, pursuant to 49 C.F.R. 1115.3, filed on behalf of The National Industrial Transportation League ("League"), requesting reconsideration of the Clarification issued on December 17, 2007 in the above-noted proceeding. In that Clarification, the Board provided notice that all railroads required to submit a waybill sample under 49 C.F.R. Part 1244 should report fuel surcharge revenues in the waybill sample field "Freight Revenue," columns 83-91 in the waybill file record layout. This Clarification is to be effective on January 1, 2008.

The League understands that this Clarification was issued because some carriers (which the League understands to be BNSF and CSXT) were separately reporting fuel surcharge revenue in the "Miscellaneous Charges" field, rather than the Freight Revenue field, and the Board desired to insure that all carriers were reporting fuel surcharge revenue in a consistent manner.

The League well understands, and completely agrees with, the Board's desire and need for consistent reporting of revenue in the Waybill Sample. However, the effect of the Board's action is to fold fuel surcharge revenue into all other revenue, thus making it impossible to track and analyze fuel surcharge revenue in the Waybill Sample.

The League believes that the Board should promote transparency in the reporting of fuel surcharge revenue. Indeed, in its Comments in Ex Parte 661, *Rail Fuel Surcharges*, the League specifically asked the Board to add data fields to its Waybill Sample to better monitor fuel surcharge revenues. See, League Comments in Ex Parte 661, October 2, 2006, p. 12. Moreover, in its decision in Ex Parte 661, the Board indicated that it would work to improve fuel surcharge reporting, and the Board issued a rulemaking to develop more detailed and more consistent fuel surcharge reporting. See Ex Parte 661, *Rail Fuel Surcharges*, decision served January 26, 2007, p. 12, and Ex Parte 661 (Sub-No. 1), served August 14, 2007, in which the Board "hope[d] to bring some transparency to the use of fuel surcharges by rail carriers." *Id.* at 3. However, the Waybill Sample could also be a useful source of information related to fuel surcharges, if fuel surcharge revenue were to be consistently and separately reported by all carriers.

The Board's December 17, 2007 Clarification, instead of promoting transparency, will make it impossible to identify fuel surcharge revenue in the Waybill Sample, and thereby to use the Waybill Sample to analyze fuel surcharge revenue, and to match fuel costs to fuel surcharge revenue. Clearly, it is not impossible, or apparently even difficult, for rail carriers subject to 49 C.F.R. Part 1244 to report fuel surcharge revenue separately – several carriers were in fact doing so.

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In its December 17 Clarification, the Board indicated that, by providing for uniformity in the reporting of fuel surcharge revenue, the accuracy and utility of the Board's RSAM calculations would be advanced. But if all carriers were to consistently report fuel surcharge revenue separately in the "Miscellaneous Charges" field, or even better, in a separate field devoted specifically to fuel surcharge revenue, it would not be difficult to add the information in the relevant fields to develop the Board's RSAM calculations, and for other purposes. As long as all rail carriers would consistently report fuel surcharge revenue separately, the accuracy and utility of the RSAM calculations would not be affected, and the utility of the Waybill Sample would be improved.

Therefore, the League respectfully requests the Board to reconsider and revise its Clarification served December 17, 2007, to provide that all carriers should consistently report fuel surcharge revenue separately, in a Waybill Sample field established for that purpose.

Sincerely yours,



Nicholas J. DiMichael
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