



ASSOCIATION OF
AMERICAN RAILROADS

Law Department
Louis P. Warchot
Senior Vice President-Law
and General Counsel

233285

October 31, 2012

ENTERED
Office of Proceedings
October 31, 2012
Part of
Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Docket No. 42137, *North America Freight Car Association v. BNSF Railway Company et al.*

Dear Ms. Brown:

On October 9, 2012, the North America Freight Car Association filed the above captioned complaint with the Board. Please find attached a petition by the defendants named in the complaint to hold the proceeding in abeyance. As noted in the certificate of service attached to the petition, a copy of the petition has been served on counsel for complainant.

Respectfully submitted,

Louis P. Warchot

BEFORE THE
SURFACE TRANSPORTATION BOARD

North America Freight Car Association)	
)	
Complainant,)	
)	
v.)	Docket No. 42137
)	
)	
BNSF Railway Company, <i>et al.</i> ,)	
)	
Defendants)	
)	

PETITION TO HOLD PROCEEDING IN ABEYANCE

On October 9, 2012, the North America Freight Car Association (“Complainant”) filed the above captioned complaint with the Board.¹ The named defendants² in the complaint hereby petition the Surface Transportation Board (“Board”) to hold this proceeding in abeyance until January 11, 2013. As further explained below, holding the proceeding in abeyance would

¹ The defendants named in the complaint are: BNSF Railway Company, CSX Transportation, Inc., Canadian National Railway Company, Kansas City Southern Railway Company, Norfolk Southern Railway, Canadian Pacific Railway Company, Union Pacific Railroad Company, and the Association of American Railroads (“AAR”) (collectively, “Defendants”).

² Though some Defendants received proper service of the complaint, a review of the service page of the pleading reveals that not all the individuals named therein are the chief legal officers of the named defendants as required by the Board’s rules, 49 C.F.R. § 1111.3, and some of the individuals named are not employees of the railroads they purportedly represent. Moreover, as of the date of this petition, not all Defendants have yet been served. Pursuant to the Board’s rules, an answer to a complaint is due “within 20 days of service,” 49 C.F.R. § 1111.4(c), and service is not complete until all defendants have been served. 49 C.F.R. § 1111.3. Nonetheless, to the extent necessary and to preserve all legal rights and defenses pending proper service and the Board’s consideration of this petition, Defendants request the Board consider this filing also as a general denial of all allegations in the complaint.

provide the opportunity for Complainant and Defendants to resolve Complainant's concerns and avoid otherwise premature involvement by the Board in this controversy. The issues raised by the complaint arise from technical changes to the AAR's Interchange Rules involving "truck hunting" standards which have been undergoing analysis and revisions since at least 2005. Moreover, as the Complainant is aware, the Defendants, through the AAR, are currently engaged in a further evaluation of benefits of the rule changes, which is expected to be completed by the end of November. Holding the proceeding in abeyance until January 2013 would allow the development of technical and safety data that could resolve the controversy and aid in settlement of the dispute. The technical and safety data would also aid the Board in its ultimate consideration of the merits of the complaint if it be required do so.

Complainant alleges, *inter alia*, that AAR Rule 46.A.1.h of the AAR Interchange Rules is an unreasonable practice in violation of 49 U.S.C. §10702(2). Rule 46.A.1.h relates to truck hunting, i.e., the phenomenon observed as the rail car truck, or rail car wheel assembly, moves as the steel wheel rolls on the track.

Truck hunting is an instability that usually occurs at speeds in excess of 45 miles per hour in cars that are empty or lightly loaded. Worn trucks can cause hunting as slowly as 35 miles per hour. This type of harmonic movement is observed as yawing and twisting of the car body around the center of the car and it may cause sufficiently high lateral and low vertical forces to cause a wheel to climb up over the rail (wheel climb).

Federal Railroad Administration, Report to the Senate Committee on Commerce, Science and Transportation and the House committee on Transportation and Infrastructure, (June 2005).

The AAR Interchange Rules, including the rules subject to this complaint, establish standards on the conditions of freight cars used in interchange so that railroads can be assured that the cars they accept onto their lines will be safe to operate and can be interchanged

efficiently. Railroads and private car owners both subscribe to the AAR Interchange Agreement, a contractual arrangement by which subscribing parties agree to maintain their cars intended to be used in interchange service in compliance with the standards established by the AAR Interchange Rules. Thus, any requirements imposed by AAR standards apply equally to railroad- owned cars as to any other cars. Interchange rules and standards, including the rules at issue in this complaint, are established by the AAR, through the work of various technical committees which are composed of railroads, private car owners and other experts.³

Truck hunting rules have been the subject of AAR standard setting because trucks with the propensity to hunt can cause many ill effects for all rail industry participants, including damage to car and car components, damage to the lading of the car (depending on lading type) and damage to the track structure. Cars that hunt can also generate car motions severe enough to cause derailments. In an effort to minimize these negative effects, significant efforts have been dedicated over the long term to investigating the causes of truck hunting. As part of the effort, hunting detectors were developed that can measure the pattern of vertical and lateral motions associated with truck hunting. One such detector uses a proprietary algorithm to generate a Hunting Index (“HI”).⁴

³ The AAR Interchange Rules for freight cars are contained in two manuals: the *Field Manual of AAR Interchange Rules* and the *Office Manual of AAR Interchange Rules*.

⁴ The Salient Systems' Hunting Truck Detector comprises a series of instrumented cribs in close proximity on a section of tangent track. (A crib is the section of track between adjacent crossties.) Each instrumented crib is equipped with strain gages applied to each rail and oriented to measure the vertical and lateral forces of each passing wheel. A wheelset on a hunting car executes a near sinusoidal motion. While executing this motion, it imparts a pattern of vertical and lateral forces to the rails. These forces are detected by the series of instrumented cribs.

In general, a HI of less than 0.2 means that the truck has not generated the car motions associated with hunting at the time it passed the detector. A HI of 0.2 or higher indicates that the truck does generate the car motions associated with truck hunting. Analyses undertaken by AAR's subsidiary, Transportation Technology Center, Inc., identified a number of significant benefits, including improvements to rail safety, which would result from bringing the HI of cars on the rail network to 0.2. Following those analyses, Rule 46.A.1.h was promulgated in 2006 to establish a threshold level HI that would require a particular car to be repaired and/or modified before it could be reintroduced onto the network.

In response to concerns raised about the impact of attempting to remedy a large number of cars at once, an incremental approach to reducing truck hunting was envisioned, addressing truck hunting in phases over a period of several years. Initially, Rule 46.A.1.h established a HI level of 0.65 for a single reading or 0.50 for two readings within a 12-month period. In June of 2007, further steps to reduce hunting were taken and the HI levels were lowered by rule to 0.55 and 0.40, respectively. The most recent change towards the goal of 0.20 was effected in January 2011, establishing the current levels at 0.50 for a single reading and 0.35 for two readings within a 12- month period.

On September 14, 2012, Complainant sent AAR a letter demanding a "White Paper" from the AAR regarding the benefits of the most recent incremental change in the process of reaching the goal of a HI level of 0.2. The request apparently stemmed from ongoing discussions between the AAR and some of its Associate Members (who are private car owners) regarding the HI levels. The AAR replied by letter dated October 3, 2012 indicating that the AAR planned to take a second look at the benefits flowing from the changes to the truck hunting rules. The AAR response explained that confusion over the nature of the benefits

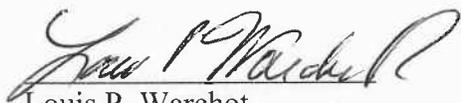
associated with rule changes, such as the most recent incremental change, that are phases of the continuing the process of moving to the HI level of 0.2, has led to the apparent misunderstanding between the parties.

To address Complainant's concerns and facilitate meaningful discussion on the matter, the AAR letter informed Complainant that the Executive Committee of the AAR Safety and Operations Management Committee ("SOMC"), which is composed of the defendant railroads' chief operations officers, had directed the AAR, through its subsidiary TTCI, to further analyze benefits of the rule. The AAR committed to Complainant to review the results of the analysis and, if the results warranted, having the relevant AAR committees consider revisiting their most recent decision to modify the standard. Complainant was also invited to meet and discuss Complainant's concerns with the SOMC Executive Committee in November. Complainant filed the current action at the Board less than a week later, rather than meeting with the SOMC Executive Committee to address the Complainant's concerns.

The Defendants believe Complainant's complaint is premature and the parties and the Board would benefit from having available the results of the analysis being presently conducted, which the Defendants expect to be completed by the end of November. The Defendants therefore request that the Board hold this proceeding in abeyance for such time as to allow the completion of the analysis and to allow the parties to meet, after completion of the analysis, and attempt to resolve the technical and safety issues that form the basis of the complaint, including determining whether to seek Board mediation. The Defendants respectfully submit that there is good cause for the Board to place this proceeding, including

requests for discovery,⁵ in abeyance and to direct the Defendants to answer or otherwise respond to the complaint by January 11, 2013.

Respectfully submitted,



Louis P. Warchot
*Counsel for the Association
of American Railroads*
425 Third Street, S.W.
Suite 1000
Washington, D.C. 20024
(202) 639-2502

/s/ William Tuttle
William Tuttle
Counsel for Canadian Pacific Railway Company
120 South 6th St.
Suite 1000
Minneapolis, MN 55402
(403) 319 7145

/s/Adam Weiskittel
Roger P. Nober
Richard E. Weicher
Adam Weiskittel
Counsel for BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2353

/s/ W. James Wochner
W. James Wochner
*Counsel for Kansas City Southern Railway
Company*
P.O. Box 219335
Kansas City, MO 64121-9336
(816) 983-1324

/s/ John P. Patelli
Paul Hitchcock
John P. Patelli
Counsel for CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 332-5914

/s/ R. Bruce Rider
John M. Scheib
R. Bruce Rider
Counsel for Norfolk Southern Railway
Three Commercial Place
Norfolk, VA 23510
(757) 629-2877

/s/ Theodore K. Kalick
Theodore K. Kalick
*Counsel for Canadian National Railway
Railroad Company*
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-3608
(202) 347-7840

/s/ Louise A. Rinn
Gayla L. Thal
Louise A. Rinn
Connie S. Roseberry
Counsel for Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179
(402) 544-3309

⁵ Defendants also reserve the right to object to request for discovery following a Board ruling on the instant petition.

CERTIFICATE OF SERVICE

I, Alyssa M. Johnson, hereby certify that on this 31st day of October 2012, I served by first class mail, postage prepaid, a copy of this petition on counsel for Complainant, as named below.

Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeny & Harkaway, P.C.
1825 K Street, N.W., Suite 700
Washington, DC 20006

Thomas W. Wilcox
Svetlana V. Lyubchenko
GKGC Law, P.C.
1054 31st Street, N.W., Suite 200
Washington, DC 20007

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Alyssa M. Johnson', written over a horizontal line.

Alyssa M. Johnson