

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42052

UNION PACIFIC RAILROAD COMPANY–PETITION FOR DECLARATORY ORDER–
UNILATERALLY IMPOSED INTERCHANGE CHARGES

Decided: June 20, 2007

By petition for declaratory order filed on February 14, 2000, Union Pacific Railroad Company (UP) asked the Board to issue an order to resolve a dispute over the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged. On March 2, 2000, Iowa Interstate Railroad, Ltd (IAIS),¹ filed a reply to UP's petition. On March 6, 2000, Indiana Harbor Belt Railroad Company (IHB)² and the City of Tacoma, Tacoma Public Utilities, d.b.a. Tacoma Rail, and Tacoma Beltline Railroad (TMBL)³ each filed a reply to UP's petition. The Board instituted a proceeding by notice served and published in the Federal Register on June 13, 2000. The U.S. Department of Transportation suggested that the Board urge the rail industry to meet and attempt to negotiate an effective and equitable resolution of the issues. By decision served on December 10, 2001 (2001 decision), the Board, recognizing that interchange delays presented an issue that would affect the entire rail industry, requested that the Association of American Railroads (AAR) convene a meeting with railroads, shippers, and other involved parties to reach a private agreement on the issue. This proceeding was held in abeyance by decision served on January 14, 2002.

On December 19, 2006, UP filed a motion requesting that this proceeding be dismissed without prejudice. On January 8, 2007, IHB filed a reply opposing UP's motion. As discussed below, the Board will deny UP's motion. The Board also requests that the parties file briefs to summarize their positions, and to apprise the Board of any new or changed circumstances, before the Board determines what action to take in this proceeding.

¹ IAIS and UP interchange at Council Bluffs, IA.

² IHB, an intermediate and terminal switching carrier, operates throughout the Chicago Switching District, and delivers traffic to UP's Proviso Yard in western Chicago and UP's Yard Center in Dolton, IL.

³ TMBL is a short line regional railroad switching in and around the Port of Tacoma region. UP interchanges with TMBL in Tacoma, WA. TMBL and UP purportedly reached an agreement on delay charges at some point prior to September 2000.

BACKGROUND

This case focuses on “tariff” provisions issued by IHB, IAIS, and TMBL, whereby penalty charges are unilaterally imposed against UP when cars are not pulled from interchange within specified time limits. UP’s petition asserts that such interchange issues are subject to the Car Service and Car Hire Agreement (CS/CH Agreement) and the Code of Car Service Rules/Code of Car Hire Rules (CS/CH Rules) administered by AAR, unless the rail carriers enter into alternative agreements. UP therefore maintains that, because it did not consent to the delay charges, and because they are not part of the CS/CH Agreement or CS/CH Rules, the delay charges cannot be unilaterally imposed. IHB argues that UP, despite being a signatory to a private industry agreement on car hire rates, has a duty to conduct operations in accordance with reasonable industry practices and the Interstate Commerce Act. IHB claims that it is within its rights to take steps to assure efficient interchange, including the filing and imposition of delay charge tariffs.

As noted in its 2001 decision, the Board deferred action and instead requested that AAR convene a meeting with railroads, shippers, and other involved parties to address issues relating to delays in the interchange of railroad cars between railroads. The rationale was that private-sector cooperation, rather than a Board decision on this particular controversy, would foster a resolution to the problems surrounding interchange that were identified at the time. The 2001 decision observed that interchange is a fundamental operational component of the national railroad network. The decision anticipated an AAR report that would include suggestions on how best to address interchange delays and the appropriate use of the CS/CH Rules.

MOTION TO DISMISS

On December 19, 2006, UP filed a motion to dismiss this proceeding without prejudice. UP states that the issues concerning the legality of the interchange charges have been resolved by negotiations or changed circumstances in the years since the petition for declaratory order was filed. Therefore, UP argues that there is no longer a need for the Board to continue this proceeding or to address the issues raised in this proceeding on a national basis.

On January 8, 2007, IHB filed a reply opposing UP’s motion. IHB states that the issues in this proceeding have not been resolved as they pertain to IHB. IHB states that its tariff remains in effect, and that the disputed tariff amounts with UP are substantial. Citing a federal court decision in City of Tacoma, Tacoma Public Utilities v. Union Pacific Railroad Company, No. C00-5054FDB (W.D. Wash., April 20, 2000), IHB states that it is unable to file a civil collection action for the tariff charges at issue, and, as a result, if the Board were to grant UP’s motion to dismiss this proceeding, IHB would need to return to the Board by filing its own petition for declaratory order. IHB argues that, because the underlying issues that would be raised in its own petition are identical to the issue presented in UP’s petition, the Board should deny the motion to dismiss.

Despite the efforts of the AAR and rail industry to resolve the problems surrounding interchange delays, some of the parties remain at odds regarding the legality of the delay charges. While it appears that the parties have resolved through private-sector negotiations some of the disagreements that existed at the time this proceeding was instituted, some disputed matters remain. IHB's opposition to UP's motion to dismiss, for example, demonstrates that not all of the issues raised in this proceeding have been resolved and that further Board action may therefore be needed. Under the circumstances, requiring the parties to begin litigating a new case to address issues already raised here would not advance the efficient administration of the Board's docket. The Board will therefore deny UP's motion to dismiss. The parties will be directed to submit briefs summarizing their positions and to apprise the Board of any new or changed circumstances.

It is ordered:

1. UP's motion to dismiss its petition for declaratory order is denied.
2. The remaining interested parties shall submit briefs summarizing their positions, and shall apprise the Board of any new or changed circumstances by July 23, 2007.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary