

BEFORE THE
SURFACE TRANSPORTATION BOARD

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North America Freight Car Association)

Complainant,)

v.)

BNSF Railway Company, *et al.*,)

Defendants)

Docket No. 42137

**ANSWER OF
ASSOCIATION OF AMERICAN RAILROADS
TO COMPLAINT**

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**ANSWER OF
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TO COMPLAINT**

Defendant Association of American Railroads (“AAR”) hereby answers the Complaint filed by NAFCA in this proceeding. AAR denies all allegations in the Complaint except where the Answer specifically states otherwise.

In response to the unnumbered Paragraph on page 2 of the Complaint, the allegations are legal conclusions and no response is required. AAR denies any allegations of fact contained in this paragraph.

JURISDICTION

The allegations in the Paragraph entitled Jurisdiction are legal conclusions and no response is required. AAR denies any allegations of fact contained in this paragraph.

THE PARTIES

1. Regarding the allegations in numbered Paragraph 1 of the Complaint, AAR admits that approximately 50 percent of the freight cars in interchange service on the North

American rail network are not owned by railroads. AAR denies the remaining allegations in Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.

2. Regarding the allegations in numbered Paragraph 2 of the Complaint, AAR admits that the defendants named in the first sentence of Paragraph 2 are Class I railroads subject to the jurisdiction of the Surface Transportation Board. AAR further admits that it issues the Interchange Agreement and Rules. AAR denies any remaining allegations in Paragraph 2.

3. Regarding the allegations in numbered Paragraph 3 of the Complaint, AAR admits that it has a Safety and Operations Committee (“SOMC”) and that over fifty subordinate committees ultimately report to SOMC. AAR further admits that committees with jurisdiction over interchange rules, car service rules and freight mechanical requirements report to SOMC. AAR further admits that private railcar owners may join AAR as Associate Members and that a number of Gold Associate Members, who like all Members and Associate Members must pay dues corresponding to their status, are eligible for seats on various AAR committees. AAR further admits that the AAR Associate Advisory Board, the members of which are not railroads, appoints Associate Members to several SOMC committees. AAR specifically denies that all AAR committee votes are on a per member basis. AAR specifically denies that the “Class I railroad industry ... effectively controls and dictates the content of the Interchange Rules,” in that each AAR Member votes individually and independently and rules may be approved or disapproved by less than a majority of Class I railroads. AAR denies any remaining allegations in Paragraph 3.

THE AAR INTERCHANGE RULES

4. Regarding the allegations in numbered Paragraph 4 of the Complaint, AAR admits that it promulgates rules and regulations pertaining to the mechanical interchange rules.

AAR further admits that it interprets and applies such rules and regulations in accordance with their intent. AAR further admits that its rules and regulations related to mechanical standards are known, and entitled, as the “AAR Interchange Rules.” AAR denies any remaining allegations in Paragraph 4.

5. Regarding the allegations in numbered Paragraph 5 of the Complaint, AAR admits that the Interchange Agreement is subscribed to by railroads, private car owners and repair facilities. AAR further admits that the Interchange Agreement and Rules address such matters as wear limits, gauging, cause for renewal or attention, correct repairs, reconditioning requirements, welding requirements, general information, and billing repair data requirements. AAR specifically denies that the Interchange Agreement and Rules impose any restriction on the operation or exchange of railcars; the Agreement and Rules affirmatively facilitate the interchange of railcars by establishing a set of conditions compliance with which assures that conforming railcars are accepted in interchange by subscribing railroads, but the Interchange Agreement and Rules expressly allow nonconforming equipment to be operated and interchanged via bi-lateral or multi-lateral agreement. AAR denies any remaining allegations in Paragraph 5.

6. Regarding the allegations in numbered Paragraph 6 of the Complaint, AAR admits that proposed changes to the Interchange Rules are processed by AAR’s Arbitration and Rules Committee (“ARC”) and that the ARC is comprised of 15 members, 11 of which must be full AAR members and three of which must be Gold Associate Members, who are appointed by the Associates Advisory Board. AAR further admits the third and fifth sentences of paragraph 6. AAR further admits that ARC decisions are generally treated as final, though they may be appealed to more senior bodies within AAR. AAR denies the allegations in the fourth sentence

of Paragraph 6 because it lacks knowledge or information sufficient to form a belief as to their truth. AAR denies the last sentence in Paragraph 6 and denies any remaining allegations in Paragraph 6.

7. Regarding the allegations in numbered Paragraph 7 of the Complaint, AAR admits that some car owners have made request to AAR to adopt certain procedures that would purport to allocate economic benefits arising from rules adopted by AAR. AAR admits that it has not purported to allocate such benefits, but AAR specifically denies the implication that its rules or standards ever attempt to allocate benefits among industry participants. AAR further specifically denies that the outcomes of its rules or standards are in any respect inequitable. AAR denies any remaining allegations in Paragraph 7.

THE AAR'S "TRUCK HUNTING" STANDARDS: THE "HI"

8. Regarding the allegations in numbered Paragraph 8 of the Complaint, AAR admits that AAR, through the ARC, adopted Interchange Rule 46.A.1.h with the aim of detecting and addressing "truck hunting" conditions with the aid of wayside detectors. AAR admits that truck hunting is generally defined as the rapid unstable lateral oscillation of the wheelsets of a railcar truck (the assembly that includes the wheels at each end of the railcar) at high speeds where the wheel flanges will impact the head of the rail as the wheels "hunt" to return to a laterally central position on the track, and that the movement of the truck and wheels in turn causes the cyclic lateral movement of a tank, hopper, or other type of lading container that rests on the car's trucks. AAR admits that it may be impossible to eliminate all oscillation related to truck performance and that excessive truck hunting can cause a railcar to operate unsafely and inefficiently, but denies that it would be impossible to eliminate all material adverse consequences from truck hunting. AAR admits the last sentence of Paragraph 8. AAR denies any remaining allegations in Paragraph 8.

9. Regarding the allegations in numbered Paragraph 9 of the Complaint, AAR admits the allegations in the first sentence. AAR admits that proposed standards that employed the new HI initially set the condemnable level at 0.65 for a single reading or 0.50 for two readings within a 12-month period, and that the implication of this standard was that readings exceeding the prescribed levels provided a basis for requiring that the railcar's defective condition be rectified in order for it to be compliant with the Interchange Agreement and Rules. AAR admits that rectifying such condition might call for car owners to make repairs to or replace various truck components, side bearings or center plates. AAR denies any remaining allegations in Paragraph 9.

10. Regarding the allegations in numbered Paragraph 10 of the Complaint, AAR admits that in 2007 the AAR, through the ARC, reduced the condemnable HI for a single reading within a 12-month period from 0.65 to 0.55, and the condemnable HI reading for two readings within a 12-month period to 0.40, as the first phase of a broader proposal, based on investigation and testing showing that an HI above 0.20 indicates an unsafe level of truck hunting, to reduce, on an annual basis, the published criteria in Interchange Rule 46 until reaching a truck hunting index of 0.20. AAR further admits that reductions in the HI correspond with reductions in truck hunting activity by railcars, which means that the railcars, and trains transporting those cars, are able to operate more safely. AAR further admits that the HI program was not initially opposed by NAFCA or private railcar interests who were members of the ARC and the AAR. AAR denies any remaining allegations in Paragraph 10.

11. Regarding the allegations in numbered Paragraph 11 of the Complaint, AAR admits the allegations in the first two sentences. AAR denies the allegations in the third sentence of Paragraph 11. The fourth and fifth sentences of paragraph 11 purport to characterize Circular

Letter C-11325, which speaks for itself, and no further response is required. AAR denies the allegations in the remaining sentences of Paragraph 11 because it lacks knowledge or information sufficient to form a belief as to their truth. AAR denies any remaining allegations in Paragraph 11.

12. Regarding the allegations in numbered Paragraph 12 of the Complaint, the first several sentences of Paragraph 12 purport to characterize Circular Letter C-11325, which speaks for itself, and no further response is required. AAR specifically denies the allegations of the third sentence of Paragraph 12; Circular Letter C-11325 itself refers to “reduced train derailments” as one set of benefits. AAR further specifically denies that the primary purpose and intended effect of the 2011 modifications to the HI standard was to reduce the railroads’ fuel consumption costs or increase railroad profitability. AAR admits that a TTCI staff member sent an email indicating that, of the projected benefits of the rule change relating to reductions in railroad fuel costs and reduction in damage to rail cars, 90% was attributed to fuel cost reduction and 10% to reduced railcar damage, but AAR denies that these were the only categories of benefits and further denies that these figures accurately describe the benefits anticipated from the proposed reduction in HI level from 0.65 to 0.20, of which the October 2010 change was but one step. AAR denies any remaining allegations in Paragraph 12.

13. Regarding the allegations in numbered Paragraph 13 of the Complaint, AAR admits the allegations in the first sentence. AAR admits that a single comment objecting to the proposal in Circular C-11325 was received from a car owner, but denies the remaining allegations in the second sentence of Paragraph 13 because it lacks knowledge or information sufficient to form a belief as to their truth. AAR admits that on December 17, 2010, the ARC approved the adjustments of the condemnable HI to 0.50 (for a single reading) and 0.35 (for two

values) effective January 1, 2011. AAR admits that the new HI levels in AAR Rule 46A.1. took effect on January 1, 2011, and that a written dissenting opinion was submitted on December 22, 2010, but denies the remaining allegations of the last sentence of Paragraph 13 because it lacks knowledge or information sufficient to form a belief as to whether the opinion's authors were NAFCA members. AAR denies any remaining allegations in Paragraph 13.

14. Regarding the allegations in numbered Paragraph 14 of the Complaint, AAR admits that in 2011 certain of its Associate Members were informed that issues raised in response to proposed changes to Rule 46.A.1.h were under review, that a written response, which came to be referred to as a "white paper," was under consideration, and that the provision of such a document to Associate Members was at times discussed. The AAR denies the remaining allegations in the first sentence of Paragraph 14. The second sentence of Paragraph 14 characterizes a September 14, 2012 letter from NAFCA, which speaks for itself, and no further response is required, and AAR denies any remaining allegations in this sentence. The final sentence of Paragraph 14 characterizes an October 3, 2012 letter from AAR, which speaks for itself, and no further response is required, and AAR denies any remaining allegations in this sentence. AAR denies any remaining allegations in Paragraph 14.

15. Regarding the allegations in numbered Paragraph 15 of the Complaint, AAR admits that private railcars found defective under the standard must be repaired or modified so as to conform with the standard in order to continue to be deemed acceptable in interchange under the Rules, and that such repair or modification is in the first instance the responsibility of the car owner. AAR denies, however, that the Interchange Agreement and Rules require car owners or lessors to bear the ultimate economic burden for any such repairs or modifications to private railcars, or allocate in any way those burdens to car owners and lessors rather than other

participants in the rail network. AAR further denies that the Interchange Agreement and Rules allocate to railroads using railcars in revenue service rather than other participants in the rail network the economic benefits associated with repairing or modifying railcars to comply with a standard. AAR denies the allegations in the third and fourth sentences of Paragraph 15 because it lacks knowledge or information sufficient to form a belief as to their truth. AAR denies any remaining allegations in Paragraph 15.

COUNT I

AAR denies the allegations and legal conclusions set forth in the three paragraphs of Count I of the complaint.

COUNT II

AAR denies the allegations and legal conclusions set forth in the three paragraphs of Count II of the complaint.

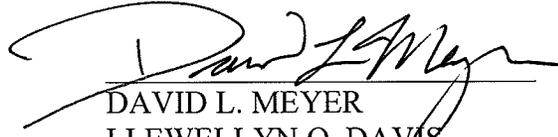
COUNT III

AAR denies the allegations and legal conclusions set forth in the two paragraphs of Count III of the complaint.

RELIEF REQUESTED

AAR denies that Complainant is entitled to any relief.

Respectfully submitted,



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December 10, 2012

CERTIFICATE OF SERVICE

I, Llewellyn O. Davis, hereby certify that on this 10th day of December, 2012, I served by electronic mail a copy of this Answer on counsel for Complainant:

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