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Surface Transportation Board

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Items: Docket EP 707 – Demurrage Liability

Definition of rail owned equipment

Excessive Demurrage Charges

Dear Board Members:

I am a small shipper on the West Coast and have been in the transportation for over 40 years and have never written to you or the ICC before but power the railroads have in determining rules and prices is abusive and I need your help in settling a couple of questions I have.

First, BNSF has taken your Demurrage Liability issue to a new level. Correct me if I am wrong but the purpose of your decision was to make the entity unloading or loading the cars responsible for the demurrage which is rightfully the case. If a car comes to my warehouse I am control the time it spends at my dock. I agree with that.

In my case, we rent several buildings in an industrial park in Vancouver WA. The business park has 6 or 7 rail customers, which the BSNF doesn't serve direct. BNSF drops the cars off on a track they own and then the LL(landlord) has a switch engine, which spots cars for me. The BNSF doesn't compensate the landlord at all for this service as the LL bills me per car. BNSF issues us no credit or price break.



The BNSF has stated and is making plans on making the LL switch company responsible for the demurrage under the guise of your Docket 707 as they (LL) are the receiver of the cars. I object to this interpretation for several reasons:

First the cars are spotted on the BNSF track and the LL is no way affiliated with any of the lading on the cars. The LL switch company has no legal ownership of the product and cannot tender a BOL to the BNSF for moving instructions. Who actually spots the cars has nothing to do with demurrage.

Second, in the case of loaded cars for receiving the BNSF and/or the origin line was paid by the shipper of the goods to have the car delivered to my door. The switching Company is doing a huge service for the BNSF and isn't compensated. Since there is no compensation between the BNSF and the switching company there is no contract or customer relationship.

Third, by making the switching company responsible for ALL cars into the park, the BNSF has taken individual demurrage contract and moved them into one favorable contract for them (unilateral). The park customers will now all suffer the same fate. The big issue is the BNSF service to the park and the constructive placement of cars regularly when cars are bunched and/or not serviced by BNSF daily.

The BNSF owned track will only hold 32 cars at a time, so if BNSF doesn't come in any day, the cars accumulate at the local BNSF yard and as more cars come in they reach the 32 limit and the start to constructively place cars. In a day or two 70 cars or so are due in and already having a demurrage clock running.

Fourth Point, bunching. BNSF has steadfastly denied any bunching that occurs on origin rail lines. Most of the wood pulp we purchase comes from Canada on the CN. The CN will bunch cars before the BNSF accepts them and then we have BNSF and CN bunching cars. Our suppliers ship 4 to 5 cars a day yet I receive as many as 30 at a time. The BNSF will not accept the bunching from CN. My feeling is bunching is a railroad issue, it should not be the fault of the receiver of the cars to have to pay demurrage because of bunching, the bunching of cars is a railroad function and which railroad should not be my concern.

To question number two about definition of rail owned equipment it also ties back to question one. I am both a shipper of paper products and receiver of wood pulp. The pulp comes to me from Canada on the CN. For 10 years we have been reloading CN marked cars for CN interline destinations of Kalamazoo, MI, several in Wisconsin and the Chicago area. No one has ever complained. A few months ago, CN asked us



to stop loading their cars. They said they didn't care where the cars were going they had an agreement with the BNSF that the empty cars were to be returned to the CN.

CN even went as far as to notify my suppliers that we would be embargoed if we loaded anymore cars. Not only does this mean that we have to pull empties from our dock and then bring in fresh BNSF empties it require that we double the cars for those lanes. This causes us extra switching costs and cost the BSNF extra switches. This is both inefficient and a waste of time.

My contention is if these are truly RR owned equipment, why I can't load them. A return agreement between the BNSF and CN should not be a constraint to my operation. My second point is if these cars in the eyes of the CN are private cars then they should not be subject to demurrage charges collected by the BNSF. Can you speak to this, are they or are they not rail owned equipment?

Finally, the BNSF has changed the demurrage rules doubling the price of demurrage from \$75 to \$150 a day, disallowing Sunday as a free day, even though they do not service the business park on the weekends. As you know the BNSF does not use debits and credit but issues demurrage by the car which is very unfair as we receive 8 different types of wood pulp and ship paper. These cars are all combined for demurrage purposes when counting the number of cars but separated by the car for demurrage charges.

My average calendar to unload cars is 3.1 yet I am faced with over \$25,000 in demurrage charges this month alone. This is excessive and unfair. As I said earlier cars are bunched, held and then we have to pay. There are times we have cars CP'd and not a car at our door.

I would ask your immediate help on remedying this demurrage issue as it put us at risk to stay in business.

Sincerely,

Scott Dalesandro

General Manager