

234419  
ENTERED  
Office of Proceeding  
June 19, 2013  
Part of Public  
Record

June 19, 2013

To: US Surface Transportation Board

Re: NPR Docket EP707, Demurrage

Members and Staff:

We are a group of small railroads independent of the American Regional and Shortline Association wishing to emphasize the importance of keeping small railroads, and switching and terminal carriers independent and removed from any requirement that demurrage practices and ability to charge and collect for demurrage be changed from current practices.

Current Practices

Generally, in the smaller railroad sector, including switching and terminal carriers such as Minnesota Commercial (see MCR filing on this subject, attached, dated June 12, 2012), the shortline or switching carrier publishes and makes available by paper or on its website a copy of its demurrage plan, and demurrage is assessed against the receiver or shipper of the car.

Many if not most switching and terminal carriers and Stagers era created shortlines (spin offs from Class I Carriers, more than likely 200 to 300 small railroads,) are not party to any line haul billing or interline accounting settlements.. Instead, in confidential contracts with their connecting carrier(s), they receive a per car allowance, which in some cases includes "x" number of days of car hire relief (i.e., days in which the shortline, or switching and terminal carrier can recover the cost of the car hire for cars interchanged to and from its connecting line(s). They most often do not receive line haul waybills or bills of lading, nor do they receive shipper bills of lading for outbound cars.. The billing for such cars is handled directly between the shipper and the line haul carrier. (One exception frequently is only hazardous material, where US DOT regulations require that "hazardous shipping papers" accompany each car placarded hazardous. Even in those cases, this information on the shipping documents is generally limited to the Hazmat code, safe handling information, emergency response handling, etc.

Small Railroads and switching and terminal carriers receive and generate interchange reports to each other, which generally just have the name of their local on line shipper or receiver, the car number and commodity. The connecting line haul (class I) carrier issues the bill of lading and waybill for its handling and does the billing to the party designated as paying the freight (this is also not known to the shortline, switching or terminal carrier)..The reverse is true for inbound cars... the interchange report from the

EXECUTIVE BOARD CORRESPONDING OFFICES | LIBERTYVILLE ILL

14047 Petronella Drive, Suite 201, Libertyville, Ill. 60048 | p 847.549.0483 | f 847.549.0484

Class I (line haul) carrier, just shows the car initial, number (contents, if loaded) and the receiving industry on the shortline or switching/terminal carrier). Settlement (payment) between the shortline – switching or terminal carrier is generally done monthly simply on the basis of a summary of cars for the period handled and it's called a switching settlement, or "settlement" statement.. Separate documents also cover any car hire relief (car hire reclaim statements). Most generally, these are all filed electronically.

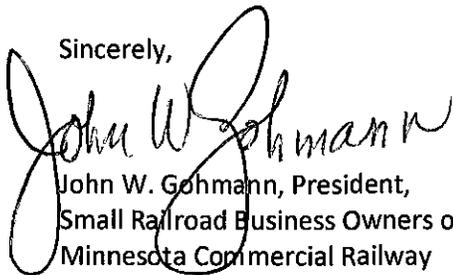
Also, the online small railroad or terminal railroad shipper or receiver has total control of when these line haul cars are loaded or unloaded. Cars are not always loaded or unloaded on the basis of the date received or placed or constructively placed on interchange. Demands and priorities of their own individual businesses dictate that. In some cases, loaded cars have been held for in excess of 30 days due to lack of warehouse space. The shortline or switching/terminal carrier customers know the shortline/switching and terminal demurrage plan and weigh the cost of known demurrage programs versus quicker unloading or loading of cars.

As noted in MCR's letter of June 12,2012, and also, in a letter from Charles Barenfanger, President of another small railroad, Effingham Railroad, the rate structures between the line haul carrier and the shortline – terminal/switching railroad which include car hire relief are very slim and allow no margin of error from the ability of the switching/terminal carrier, or shortline, to assess its own demurrage to recover the cost of extra track space, switching and car hire incurred when cars are held by its customers.

In summary, while the STB proposal may work when cars originate and terminate at industries on the lines of Class I carriers involved in the interline movement process and settlement (where the shipper, the receiver and the payor of the freight is known), it will not work for hundreds of shortlines as well as switching and terminal carriers. It would quickly wreak havoc on their financial condition and disturb well accepted practices understood and applied as between those railroads and their customers.

We urge the Board to allow the existing practices and arrangements continue on these lines.

Sincerely,

A handwritten signature in black ink that reads "John W. Gohmann". The signature is written in a cursive style with a large, looping initial "J".

John W. Gohmann, President,  
Small Railroad Business Owners of America  
Minnesota Commercial Railway

Attachments

Letter from Mr. Barenfanger,  
MCR filing with STB June 12, 2012

## GENERAL NOTE

Because arrangements and compensation as between shortlines, switching and terminal carriers as well their connecting lines are confidential, we hope the Board can understand why they cannot be provided here.. IF needed, we can ask if some railroads would agree to provide those under confidential seal to the Board.. The narrative in the letter is based on general conversations with several railroads as well as the author's experience as a consultant and founder - operator of several shortline railroads over a 48 year career. Some situations may vary, especially involving some pre Staggers Act shortline carriers, which may in some cases, participate in the interline process.. However, to the best of the author's knowledge, having negotiated switching arrangements for a switching and terminal carrier as far back as 1981, public and private switching quotes OUTSIDE of the interline process are the general rule in the USA, and all have separate demurrage programs as well as separate and private car hire relief or reclaim arrangements which vary by size of terminals, customer practices, and expected service levels encompassed in the switching charges.

But, in any case, the importance of allowing these arrangements cannot be understated. Many shortlines and switching and terminal carriers again have no idea who is paying the freight, and to attempt to begin to participate in an arrangement which the Board intended for large railroads who do have and are privy to that information would as noted, be impossible and totally impractical. Literally hundreds or thousands of shippers each month can be involved – one for every car handled!. These small railroads have established credit relationships with their on line customers, who all understand the small railroad's demurrage plan and its costs, and how to use it effectively. We again simply ask the STB to not take any action to interfere with those well accepted arrangements.

# EFFINGHAM RAILROAD COMPANY

**PO Box 190**

**129 N. Kennedy Blvd.**

**Vandalia, IL 62471**

June 10, 2013

To: The US Surface Transportation Board

RE: Demurrage – shortline railroads

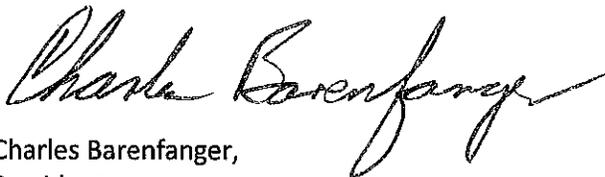
Effingham Railroad is a small railroad serving an industrial park in Effingham, Illinois, with a few customers including a warehouse – distribution center.

Customers do not always order cars set or released based on the time or date interchanged to us. Oftentimes, warehouses or other customers will have priority shipments to load or unload, known only to them and their customers, and will order specific cars set for loading or unloading.

We have our own demurrage program and charges known to our customers provided both electronically and /or paper. The costs for car detention (demurrage) are, as we understand it, considered in the private charges as between our customers and their customers as a cost of doing business.

It is vital that the STB not disturb such current arrangements on smaller railroads or switching and terminal carriers. The per car revenues we receive from our connecting carriers is relatively small and only factor in a few days of car hire expense (the amounts we must pay the companies or railroads owning the cars under the AAR – Railinc car hire accounting system). Our economics and financial stability can quickly be jeopardized if we are unable to assess and collect demurrage charges that are used to offset additional handling costs and car hire costs we incur to accommodate the above described practices of customers.

Thank you for your understanding and consideration



Charles Barenfanger,  
President.

COMMERCIAL TRANSLOAD OF  
MINNESOTA

John W. Gohmann, Chairman, President  
14047 Petronella Drive, Suite 201  
Libertyville, Ill. 60048  
p. 847-549-0486, fax 847-549-0485  
toll free: 888-489-2326  
email: johngohmann@msn.com

June 12, 2012

To: Members and Staff of the US Surface Transportation Board

RE: Proposed Notice of Rulemaking, Docket EP 707, Demurrage

Dear Members and Staff

Minnesota Commercial is a Class III, independent switching and terminal carrier serving about 150 customers in the Metro Twin Cities area on 150 miles of track. We were not aware of the proposed rulemaking until recently, and would have commented before had we known this proceeding was in process. We appreciate the opportunity to contribute and comment, and we appreciate the Board's interest in this matter. It is very important.

As background, in 2011, MCR handled some 49,200 revenue cars. Of these, approximately 36000 were originated or terminated cars loaded or unloaded by customers. Our overall profit margins on all cars is just over \$13.00 per car very slim. We and our customers compete with three major Class I carriers in the Twin Cities and their customer so it is important that we maintain charges at reasonable levels to insure that our customers are on a level playing field with those of our competitors and there are no additional charges assessed by the Class I carriers for our switching services - stated another way, we need to keep all our customers on a level playing field with those on our Class I competitors. We have grown our business, since our 1987 beginnings, from just over 6000 cars a year to the 49, 200 level last year by maintaining this policy, and have located over 100 new customers on our line during this time and developed almost all available real estate along the lines we operate. Along with this growth has come massive investments in our infrastructure, our track upgrading and maintenance, new track and yard track and siding construction, locomotives and equipment. We provide 24 hour per day, 7 day per week service. For example, over the past three years, we have gone in debt six million dollars in pursuing these efforts. We also offer superlative service- we will provide our customers with multiple switches per day and weekend service consistent with their own capacity and ability to unload or load cars. We also offer reloading and transloading services on our line, either through our own wholly owned sister company, Commercial Transload of Minnesota - CTM Trucklines, or, by allowing customers to do their own transloading. CTM's business is largely not subject to STB rail jurisdiction as its done under Part B (or title II of the ICC Termination Act, (the Motor Carrier Act), and covered by those statutes, rules and regulations, and CTM holds a Motor Carrier license pursuant to those statutes, rules and regulations and is a separate company from MCR, and it too pays demurrage. If a customer choses to use CTM as a transloader, the charges for any services, whether transloading, warehousing or trucking (if even associated with a railroad movement) and

EFiled  
7/10/12

Minnesota Commercial Railway

and separate and apart from any rail transportation charges and must be arranged entirely with that company. CTM is thus a customer of the MCR, like any other customer..

In attempting to remain competitive, MCR's demurrage charges are less than most of our class I competitors and are hourly assessed, and on a 24 hour basis, approximate \$59 per 24 hours..Customers are given two to three free days and free time on holidays and weekends..Most others assess demurrage on a daily basis.. So, after the "free time", while a customer on many other carriers would pay a 24 hour charge if a car was say, released at 0700, an MCR customer would pay just 7 hours for that day. MCR does not make demurrage a profit center – only a cost recovery, as the cost of many newer freight cars on a per diem basis can be \$30 to \$40 per car per day, and, coupled with our huge capital investments to add track capacity to hold cars (about six miles of new capacity in the past three years in yard and sidings built and rebuilt), To provide the level of service necessary to meet this 24/7 service, we maintain a fleet of 35 locomotives and operate 9 to 11 crew assignments daily during weekdays with lesser on weekends to serve our customers needing weekend service and maintain seven day a week interchange with all our connecting carriers, which with our four Class I connections, CN, CP, BNSF and UP, averages about 50 cars a day delivered and 50 cars received.

Also, it is important to note that while we are able to reclaim against the class I carriers with whom we connect anywhere from 48 to in some cases 120 hours on the cost of these per diem charges, the car hire charges we owe the connecting carriers is automatically drafted each month from our bank accounts – a condition of doing business with all the larger carriers. We pay the car hire regardless of whether our customers pay their demurrage bills – and at an overall margin of just around \$13.00 per car left for profit, this does not leave room for any non payment of demurrage.

We are much like the IHB.. (We also believe many more Class III carriers and switching and terminal carriers may have responded to your request for comments had they known about this proceeding. In our discussions with others, we just don't think they knew about it.) Like the IHB, we have many public warehouses, lumber reloads, grain elevators and other industries.. We are NOT a party to any Class I contracts or arrangements and we rarely receive any line haul waybills or bills of lading (except for hazardous materials, which must be provided under FRA regulations for proper and safe handling of such commodities). We do know from our experience that cars are shipped to or received from thousands of origins.. They can be hundreds of different lumber mills or dealers in the US or Canada, hundreds of different grain companies or terminals in the US or Canada, and hundreds of different manufacturers, etc, in the US and Canada and occasionally, even Mexico. Historically, about 75% of MCR's switching business are terminated cars. We have NO idea of who is paying the line haul freight bills! We are compensated only through the submission of electronic switching settlement statements once per month rendered to our four Class I connections, the CP, CN, BNSF and UP..

MCR publishes our demurrage charges to all our customers and through our marketing representatives, they are explained to them if they have any questions they are answered by our

marketing and operating people, and our operations are geared to keeping their charges down by switching the oldest cars for placement at all times unless the customer requests otherwise.. However, oftentimes, due to needs for certain cars with certain products, all of these customers can and do request the placement of newer cars as the products are needed to fill the needs of their various customers – and MCR has NO knowledge of who these multitude of various customers may be..

While MCR respectfully submits to the STB that a release of customer liability for demurrage through some notification by a third party shipper advising that party is liable demurrage charges, in real life this does NOT work.. Let us tell you a story.

A few years ago, MCR entered into a track lease agreement with a party advising he was the distributor for a certain salt company who had been referred to us by a marketing representative of one of our Class I connections, who represented their customer as long standing and viable. The salt company confirmed this and advised they were the shipper and would be responsible for demurrage. However, within about 45 days, several dozen cars of this product were shipped and arrived on the customer's leased track, (leased to their so called "local distributors) demurrage charges were billed but not paid by both the salt supplier and the customer, and cars kept coming in.. Within sixty days, around 45 to 50 cars accumulated and the so called local distributor, we were later to learn, had his contract terminated by the salt company who then advised they would not be paying the demurrage bills.. In addition to the financial exposure for the car hire to the BNSF Railway, this accumulation of cars also took up two entire Yard tracks in MCR's main classification yard until MCR was able to require the parties to unload each car..The so called distributor then declared bankruptcy.. MCR was NOT able to embargo the traffic under STB rules which do not allow embargoes for non payment of demurrage. A long year and one half lawsuit was commenced by MCR against both parties.. The legal bills up to the time of discovery and including discovery which MCR incurred were about \$35,000 – an amount close to the total of the demurrage bills.. A settlement was finally reached in discovery of \$25,000... so the end result was a long and time-money consuming law suit where MCR lost upwards of \$30,000on demurrage and paid another \$35,000 in legal fees, for a total loss of around \$70000.00.

This experience plus how reloaders, warehouses, and others handle their business to respond to the needs of their own customers teaches valuable lessons which we respectfully suggest the STB incorporate into the rulemaking.

1. Customers unload and load cars based on the needs of their customers and not always To minimize demurrage charges and arrangements with the warehouseman/reloader/grain dealer or processor can change without the carrier knowing.
2. The inability of carriers to embargo traffic due to non payment of demurrage should be rescinded and rail carriers allowed to embargo traffic for non payment,
3. A simple letter from a shipper that they are responsible for demurrage and not the

Consignee receiving or shipping the car on their behalf is not ample for protection to the rail carrier, particularly a switching carrier who is NEVER a party to line haul rates Contracts or quotes and not known by the switching carrier.

4 Any carrier should be allowed to require any customer to post a performance bond sufficient to cover the anticipated costs of demurrage – by the shipper or the consignee third party handler where there is a new customer or a customer who has a history of non payment of demurrage and also embargo the traffic until resolved and paid..

We have other similar examples.. About ten years ago, a warehouse on our line developed financial difficulties and over 50 carloads of paper accumulated – all shipped from various eastern sources by several different paper companies.. Tens of thousands of dollars of demurrage became payable as the warehouse was unable to unload the cars.. Eventually, we learned who the various shippers were as they would call us to get their cars released and rebilled.. We then negotiated release and switch and other ancillary charges sufficient to cover most of our losses with various paper companies, but, like the salt cars, in addition to the costs of the car hire we had to pay, we also incurred congestion in our yard space due to having to hold these cars for several months on two separate tracks until the diversion and rebilling took place.

And, we have several steel companies/processors who will order dozens and even over a hundred cars at one time due to the timing of and to avoid price increases in the steel business which can occur quarterly or semi annually.. The only way we know this is happening is by requesting our connecting carriers to give us daily advance reports of cars on their line destined to us.. Again, we have no waybill information or who the shipper may be.. Once we learn this, we contact the receiver and try to work out a plan.. In almost all of those cases, these established MCR customers work with us and agree to multiple daily switches and weekend service to offload these cars and do pay their demurrage, although in some cases, the payments take two or three months to receive – while in the meantime, we accumulate car hire costs on them..

In summary, it is clearly not a perfect world and simply allowing a shipper to notify the railroad that they will pay the demurrage is grossly insufficient for reasons that are detailed herein. Rather, we submit that even with established rail customers with good credit and a good record of payment, that in addition to the above suggestions, the relationships between warehouses/reloaders and other receivers and shippers with respect to payment of demurrage are best worked out in relationships in charges for handling as agreed to between those parties. The handling party more than likely has dozens of such relationships with dozens of shippers, and that party, in particular, knows if the shippers requirements will require priority handling that will require other cars consigned to them to sit for several days as other cars for other parties may take priority..

As we understand the STB's proposal, the receiving or handling party is responsible for demurrage unless there is a third party who claims they will be responsible – which as we noted by examples above, sometimes proves to be invalid. Even in such cases, the shipping party can claim they are

not responsible because the third party handler may have other priority cars to load or unload, and then dispute and not pay the charges, sever the relationship without knowledge of the carrier, etc. We do not believe it wise to allow this, but, if you do, then each receiver would be required to provide us information prior to the time each car is shipped from the potentially thousands of different origins or shipped to the same of who that shipper is IF they intend to make the line haul shipper paying the freight responsible for the demurrage and allow the negotiation of a performance bond by the handling carrier.. That has a potential of creating an administrative nightmare for not only the railroad, but our over 100 customers! It is not practical. Such a policy may be appropriate for large class I carriers who originate or terminate such traffic on their own lines, but, only where in such contracts or arrangements, demurrage payments are a part of such contracts or quotes and negotiated at the time of drafting between those parties.. But, while we cannot speak for the Class I carriers, this should be an option at the discretion of the carrier(s) involved and not broadly permitted in STB regulations..

These incidents, when they occur, not only impact the efficient utilization and availability of the national railroad car fleet, but, also jeopardize the financial viability of railroads - especially those of Class III carriers who perform in essence switching services for their Class I partners.

In comparable general business situations, allowing a simple letter to be produced to allow a shipper or receiver to escape the demurrage obligation is equivalent to a practice where someone could walk into a retail store, fill their shopping basket full of thousands of dollars of items, and at the check out counter, produce the letter telling the seller to bill someone else. Obviously, that does not happen - as seller the (in comparable terms, the railroad), has no knowledge of what the practices are of the buyer, their buying habits, etc,) and is obviously not practiced. In the rail industry, who has as noted is not party to relationships between the shipper and receiver and has no control over the scheduling of loading or unloading of railcars, the relationships between these parties are the only practical and fair way - and quotes for warehousing, transloading, and handling as between the two the only practical way for this to be conducted.

We appreciate the opportunity and your concern for a fair and proper final resolution of this matter and gladly will answer any questions..

Sincerely,

  
John W. Gohmann,  
Chairman and President.

**SURFACE TRANSPORTATION BOARD DECISION DOCUMENT**  
**Decision Information**

Docket Number: **EP\_707\_0**

Case Title: **DEMURRAGE LIABILITY**

Decision Type: **Decision**

Deciding Body: **Director Of Proceedings**

**Decision Summary**

Decision Notes: **DECISION GRANTED A MOTION FILED BY INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION TO EXTEND THE SCHEDULE FOR FILING COMMENTS IN THIS PROCEEDING.**

**Decision Attachments**

42454.pdf

12 KB

26 KB

Approximate download time at 28.8 kb: **18** Seconds

① Note:

If you do not have Acrobat Reader, or if you have problems reading our files with your current version of Acrobat Reader, the latest version of Acrobat Reader is available free at [www.adobe.com](http://www.adobe.com).

**Full Text of Decision**

42454  
DO

SERVICE DATE – JUNE 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 707

DEMURRAGE LIABILITY

Decided: June 13, 2012

This decision grants a motion filed by the International Warehouse Logistics Association (IWLA) to extend the schedule for filing comments in this proceeding.

By decision served on May 7, 2012, the Board issued a Notice of Proposed Rulemaking (NPR) in which it proposed a rule establishing that a person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the “free time” provided in the carrier’s governing tariff will generally be responsible for paying demurrage, if that person has actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. Comments on the NPR are due by

June 25, 2012, and reply comments are due by July 23, 2012. On June 4, 2012, IWLA filed a motion requesting a 60-day extension of the schedule for filing comments. The Association of American Railroads filed a reply on June 6, 2012, stating that it does not object to the request. Under IWLA's proposed extension, comments would be due by August 24, 2012, and reply comments would be due by September 21, 2012.

The extension request is reasonable and will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. IWLA's motion to extend the schedule for filing comments is granted. Under the revised schedule, comments are due by August 24, 2012, and reply comments are due by September 21, 2012.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.