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SUITE 700

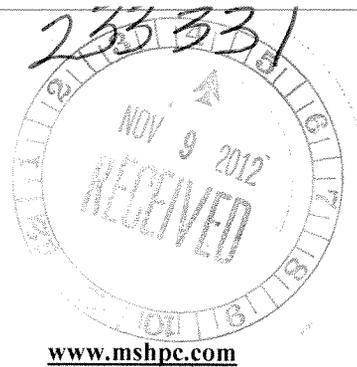
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November 9, 2012

ENTERED
Office of Proceedings

NOV 09 2012

Part of
Public Record

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

Re: Docket NOR 42137, *North America Freight Car Association v. BNSF
Railway Company, et al.*

Dear Ms. Brown:

Enclosed for filing is a signed original and 10 copies of a Reply to Petition to Hold Proceeding in Abeyance in the above-captioned case.

Sincerely,

Andrew P. Goldstein

Enclosures

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

NOV 09 2012

Part of
Public Record

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

REPLY TO PETITION TO HOLD PROCEEDING IN ABEYANCE

Complainant North America Freight Car Association (“NAFCA”) hereby replies in opposition to the Petition to Hold Proceeding in Abeyance (“Petition”) filed by the Defendants in this case on October 31, 2012. The Petition cites no legal authority or agency precedent supporting it. Rather, it makes the extraordinary request to hold this case in abeyance so that the Defendants, through Defendant Association of American Railroads (“AAR”), can develop evidence in support of a *post hoc* rationalization for the AAR Interchange Rule modification around which the Complaint is centered in the form of an analysis of “technical and safety data” that the AAR admittedly chose not to perform over two years ago when it proposed the rule change that is the subject of the Complaint. AAR made this choice in 2010 after its private car owner Associate Members complained that the proposed rule would not have any safety benefits. Moreover, the Petition misstates the history and facts underlying this dispute, which is only before the Board because of the persistent and intentional refusal of the Defendants to address Complainant’s con-

cerns in an informal manner for over two years. The Petition constitutes another attempt by the Defendants to delay resolution of this matter, and it should be summarily denied and this case be permitted to proceed pursuant to the Board's rules.

I.

BACKGROUND

The Complaint challenges the lawfulness of an AAR Interchange Rule addressing "truck hunting" that was proposed in October of 2010 and went into effect on January 1, 2011, and the process by which the AAR proposed and adopted the modified rule. The AAR Circular Letter C-11325, attached to the Complaint, projected that the benefits from the rule were "reduced fuel consumption and reduced equipment damage." Complaint, Appendix B at 2. The Complaint alleges that AAR's internal analysis in 2010 concluded that 90% of the benefits of the proposed rule would be in the form of reduced railroad fuel costs, and that "no increased safety benefits were projected" by AAR. Complaint at ¶12. Numerous private railcar owners, including two members of NAFCA who are Associate Members of the AAR, submitted comments objecting to the proposal in 2010. Complaint at ¶13. These objections, some of which are attached as Exhibits to this Reply, complained that (1) private railcar owners would bear the costs of the new rule but the overwhelming benefits of the change would be in the form of fuel cost savings to the railroads; (2) "it appears little or no safety benefit is expected from this proposed rule;" and (3) the AAR did not have a process whereby the primary beneficiary of a rule change would pay for its appropriate share of the costs of compliance. Exhibit 1; *See also* Exhibit 2 at 2 ("It is significant to note the [AAR] analysis does not include any benefits in safety due to this rule change.")

In response to the AAR private car owner Associate Member concerns, the AAR informed them in early 2011 that it was internally reviewing their complaints about the appropriate

sharing of the costs and benefits of proposed AAR rule modifications and preparing a document, or “white paper,” addressing these issues for further discussion and possible resolution. Complaint at ¶14. See Exhibit 3 at 3 (at an AAR committee meeting on May 2, 2011 “the AAR was tasked to develop a ‘white paper’ detailing the [cost/benefit] issue and recommending a path forward for the committee”). After no document was issued in 2011, the AAR, through its Assistant Vice President, Technical Services, informed private car owner Associate Members of the AAR in early 2012 that the “white paper” would be released on June 1, 2012, and that they could submit comments on the allocation of costs and benefits issues by April 1, 2012 for consideration by the drafters of the document. *Id.* at 1. As outlined in ¶14 of the Complaint and the correspondence attached to this Reply, the promised document was not issued on June 1, 2012, and the AAR Assistant Vice President, Technical Services informed NAFCA on October 3, 2012, that a “white paper” or similar document was in fact *not* going to be issued. Exhibit 4. Instead, the AAR was considering an internal request to “undertake the safety analysis that was not affected in 2010 and determine the safety benefits of the rule.” *Id.* at 2. This Complaint was filed shortly thereafter, on October 9, 2012.

II.

ARGUMENT

Typically, complaint proceedings are held in abeyance at the request of both parties if they are actively engaged in settlement discussions or both agree to Board supervised mediation. Docket NOR 42132, *Canexus Chemicals Canada LP v. BNSF Railway*, Decision of Office of Proceedings, dated May 15, 2012 (request to hold in abeyance due to settlement discussions); NOR 42134, *National Railroad Passenger Corp. – Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Co.*, (Served November 5, 2012) (ref-

erencing mutual requests for mediation). Where, as here, no settlement discussions are taking place and the parties have not requested mediation, the Board has held parties seeking to hold complaint and other proceedings in abeyance over the objection of the other party to a rigorous showing of good cause. In Docket NOR 42113, *Arizona Electric Power Coop., Inc. v. BNSF Railway Co., et al*, (Served April 23, 2009), the defendant railroad had to demonstrate that an ongoing state court action justified holding that coal rate case in abeyance because the action effected the Board's jurisdiction. In an adverse abandonment proceeding, the Board denied a request of a party to hold the proceeding in abeyance so it could examine the historic significance of the right-of-way at issue. Docket No. AB 1071, *Stewartstown RR Co. – Adverse Abandonment – In York County, Pa*, (Served August 24, 2011). The Board's reasoning in that case was that the procedural schedule afforded the party sufficient time to examine the right-of-way and participate. The Board has also denied requests to hold cases in abeyance where the requesting party cannot demonstrate good cause exists, and the other party or parties demonstrate harm would occur from a delay. Docket No. AB-6 (Sub-No. 335X), *Burlington Northern RR Co. – Abandonment Exemption – Between Klickitat and Goldendale, WA*, et al (Served June 8, 2005). In the case of the Defendant's Petition, no good cause exists, and NAFCA would be harmed from further delay in resolving the issues set forth in the Complaint.

A. The Petition is a Delay Tactic that Should Be Rejected

The above background discussion demonstrates that the Defendants in their Petition have misstated the basic facts and events that preceded the filing of this Complaint. Those facts and events clearly show that the issues giving rise to the Complaint originated over two years ago, and that the AAR and the other Defendants have engaged in a systematic effort to delay and ultimately prevent the very informal resolution of this dispute the Petition now unilaterally infers is

possible. As shown by the attached correspondence and memoranda, the primary tactic used by the Defendants to delay and obfuscate the resolution of this issue was to repeatedly promise the AAR's Associate Members an internal analysis, or "white paper," in which Defendants would address their 2010 concerns about the failure of AAR rules and processes to analyze and account for the relative costs and benefits of proposed rule changes. The private car owner Associate Members also voiced their concern that the AAR's analysis of the rule change did not conclude there were any safety benefits from it, but the AAR chose not to rebut these concerns by quantifying the safety benefits from the rule, either before or after its promulgation. NAFCA and its private car owner Associate Members of AAR delayed seeking formal resolution of their complaints about the lawfulness of the 2011 rule change in reliance upon the AAR's representations about its internal analysis and the belief that the document the analysis produced might address their concerns with sufficiency to obviate the need for Board involvement.

The Petition disingenuously infers that only NAFCA requested a white paper from the AAR, and that this single request for a white paper was made on September 14, 2012. This misstates and distorts the actual relevant facts. Indeed, the attached documents demonstrate that AAR promised its private car owner Associate Members it would prepare a "white paper," or document, addressing their concerns as far back as May of 2011, only five months after the challenged rule change went into effect. Exhibit 3 at 3. The Defendants then proceeded to string AAR's private railcar owner Associate Members along for 16 months with the promise of such an analysis, only to disavow that such a document was even being prepared when finally pressed to produce it or face a formal complaint at this Board. Exhibits 4 and 5.

Accordingly, far from being "premature," as the Petition asserts (Petition at 5), the Complaint and the Board's involvement in this dispute is arguably long overdue. The Defendants'

delaying tactics to date in response to Complainant's efforts to try and resolve this dispute outside of the Board give the Complainant no reason, and should also give this Board no reason, to believe that holding this case in abeyance will result in productive discussions between the parties and a satisfactory resolution of this dispute. NAFCA is certainly willing to engage in discussions with the Defendants at any time, but NAFCA strongly believes that under these circumstances such discussions must take place in the context of an ongoing formal proceeding before this Board with an established procedural schedule. Holding this case in abeyance indefinitely, as Defendants propose under these circumstances, will result in additional harm to NAFCA and its members, who have continued to absorb the costs of complying with the 2011 rule change while AAR has engaged in its delay tactics.

B. The "Technical and Safety Data" Referenced in the Petition is Merely Evidence Being Developed to Support a *Post Hoc* Rationalization of the Rule Change at Issue

As part of its justification for holding this case in abeyance, the Petition states that the AAR is "currently engaged" in an evaluation of the benefits of the 2011 rule change, specifically "technical¹ and safety data." This is also misleading. First, it is evident from documents contemporaneous with the promulgation of the changes to Rule 46.A.1.h in 2011 that the AAR evaluated the benefits of the rule change at that time and gave no consideration to the safety benefits of the new rule change because the AAR knew that little or no safety benefits would accrue from the change. Rather, the AAR's own analysis concluded that 90% of the benefits would be cost savings from increased fuel efficiency. Complaint at ¶15. Complainant is confident that discovery and the evidentiary record to be developed in this proceeding will clearly establish that no

¹ NAFCA does not know what the reference to "technical data" refers to, and the Petition does not elaborate. No mention of "technical data" appears in the October 3, 2012 letter from the AAR to NAFCA. Rather, that letter refers only to a "safety analysis." Exhibit 4 at 2.

safety benefit analysis was conducted in 2010 because no discernible additional safety benefits were anticipated or intended by AAR, its outside expert consultants, and the other Defendants.

Second, the justification proffered in support of the Petition does not withstand scrutiny. Contrary to the Petition's statements, a belated safety analysis will neither "resolve the controversy" nor "aid in the settlement of the dispute." Petition at 2. Complainant alleges that the promulgation of the 2011 truck hunting rule modification constituted an unreasonable practice and was otherwise unlawful. Thus, AAR's unilateral post-filing activities are wholly irrelevant to the legal issue at hand. What is relevant is the AAR's actions (or failures to act) at the time the truck hunting rule was promulgated and a post-filing safety justification will not transform an unreasonable practice into a reasonable one nor otherwise resolve the parties' dispute.

Third, AAR announced it was considering² undertaking a "safety analysis" of the rule "that was not effected in 2010" - nearly two years after the modification was proposed - only *after* NAFCA informed AAR that NAFCA had become sufficiently frustrated with AAR's delaying tactics that it was going to file a complaint with this Board and seek formal resolution of this matter. Accordingly, the Petition's statement that AAR is "currently engaged" in such an analysis is misleading, as is the insinuation that the "technical and safety data" evaluation purportedly being conducted by AAR is part of any ongoing discussions between the parties. Petition at 2 and 5. Rather, the belated "technical and safety data" evaluation is evidence AAR is creating in an attempt to provide a *post hoc* rationalization for the 2011 rule change in light of its own determination in 2010 that 90% of the benefits would accrue to the railroads in the form of fuel cost savings. AAR is free to develop whatever evidence it wants in order to defend itself, and the

² Contrary to the Defendants' representations to the Board in the Petition, the AAR in its October 3, 2012 letter to NAFCA did *not* commit to doing the analysis it now references in the Petition and, since no commitment was made, no date to complete any study was set. Petition at 2 (evaluation "expected to be completed by end of November").

Board can attach whatever weight to such evidence it determines is appropriate. However, the development of evidence by a party provides no justification to hold a case in abeyance, particularly in this case where a procedural schedule for discovery and submitting evidence has yet to be established.

III.

CONCLUSION

For all the reasons set forth hereinabove, the Defendants have not demonstrated that good cause exists to hold this case in abeyance, and doing so would result in harm to Complainant. The Petition should be expeditiously denied.

Respectfully submitted,



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/s/ Thomas W. Wilcox

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Attorneys for Complainant

Dated: November 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has, this 9th day of November, 2012, been served by first class mail, postage prepaid, on counsel as follows:

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Washington, DC 20024

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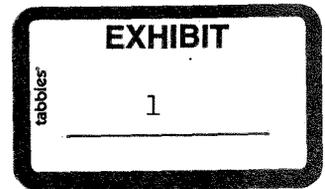
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1400 Douglas Street
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Andrew P. Goldstein



Terry Heidkamp

From: Terry Heidkamp
Sent: Tuesday, November 16, 2010 8:25 AM
To: 'Stahura, Thomas'; Grady, James
Cc: Tom Mordock
Subject: Comments on C-1325

Tom,

GATX has been and continues to support use of wayside detection devices to identify poor performing freight cars and components. Additionally, we support changes to interchange Rules that are intended to address safety issues.

C-11325 describes a proposed rule change that, if adopted, would reduce the Hunting Index Values in Rule 46. The additional costs associated with this proposed change are projected at \$82.5 million over the first 15 years after implementation. Since a majority of railcars are owned by non-railroad companies, a majority of those additional costs will be borne by non-railroad car owners.

C-11325 states that "the benefits of remediating these cars occur in reduced fuel consumption and reduced equipment damage." C-11325 also states that "there are non-quantified benefits of reduced train derailments and reduced train delays."

We understand the phenomena of truck hunting and understand the desire to have it minimized. However, based on the information provided in C-11325 it appears that little or no safety benefit is expected from this proposed rule change, which is not surprising given that the initial implementation of the Hunting Index in 2007 likely addressed the most significant safety concerns.

Over the past several years we have consistently advocated for an equitable distribution of the costs and benefits associated with rule changes. C-11325 makes it clear that the overwhelming majority of the benefits associated with this proposed rule change will accrue to railroads in the form of reduced fuel consumption. We discussed the issue with Tom Guins and did not get any information to the contrary. Unfortunately, the rule fails to require railroads, as the primary beneficiaries of the proposed change, to pay their fair share of the additional repair costs associated with the change. Instead, the bulk of these costs will be borne by non-railroad car owners. As such, we request that implementation of the rule be postponed until a mechanism is established to require the railroads to pay an equitable share of the costs related to the proposed rule change.

Thanks for your consideration.

Terry Heidkamp

December 22, 2010

To: Tom Stahura

Fr: Tom Mordock, John Kieras

Re: Dissenting Opinion of the Arbitration & Rules Implementation of Field Manual Rule 46
Truck Hunting Index Changes.

Tom,

On December 17, 2010 the Arbitration & Rules Committee considered comments to Circular C-11325, the proposal to change the condemning Truck Hunting Index in Field Manual Rule 46. There was one comment submitted from GATX, copy attached.

In their comments, GATX made reference to the economic analysis which determined that reducing the truck hunting index will reduce fuel consumption and equipment damage. That analysis concluded that 90% of the expected cost savings associated with implementation of the reduced index will accrue wholly to railroads due to reduced fuel consumption. It is significant to note the analysis does not project any benefits in safety due to this rule change. As such, it seems appropriate to conclude that all safety benefits associated with implementation of the truck hunting index were achieved in the initial implementation of the truck hunting condemning limits. GATX requested a delay in implementation of the rule until the committee had established a process for railroads to pay for the significant fuel savings they will receive as a result of the rule.

It is essential to note that both GATX and Union Tank Car strongly support rule changes that are expected to improve railroad safety. The record is clear that both companies have consistently voted to implement those changes. We supported and participated in development and implementation of the initial truck hunting rule which was expected to improve safety. In that case, significant safety benefits were identified and it was appropriate that the implementation costs were borne exclusively by car owners. We supported the committee's recommendation and have spent significant time and money to ensure compliance with the rule. Among other safety related rule change, we also supported the recent changes for both straight plate and Southern wheel removals.

Going forward, both GATX and Union Tank Car will continue to provide support for initiatives that improve safety, including accepting our responsibility to ensure our railcars comply with those rules.

The Arbitration & Rules Committee did not believe they have the authority to address GATX's request for an equitable distribution of costs and therefore voted to implement the rule as proposed. Both GATX and Union Tank Car voted against the proposal.

We understand that rule changes of this nature are in the best interest of the industry, however want to see a process for fairly allocating costs based on who receives the benefits. There is precedence for this dating back to the early 1990's with the rule requiring initial application of AEI tags. We would ask that the Arbitration & Rules Committee be authorized to make these types of decisions with the support of the AAR Economic & Finance Department. This committee has representatives of railroads and private car owners, both being interested and affected parties. We also ask that this truck hunting rule be reviewed to develop an appropriate alignment of costs with benefits.

Since this was discussed during the December 17, 2010 conference, it would probably be appropriate to share this request with the full committee, and to elevate it within the AAR.

March 27, 2012

Mr. James Grady
Assistant Vice President, Technical Services
Association of American Railroads
425 3rd Street, SW
Washington, DC 20024

Dear Jim:

At the AAR Associates Advisory Board ("AAB") meeting on March 7, 2012, you indicated that the long-anticipated "White Paper" addressing the alignment and allocation of the costs and benefits related to AAR rule making would be released on June 1, 2012. You also mentioned that comments from interested parties, including AAB members, would be accepted up to April 1st. The following comments are submitted in accordance with this direction by seven current Associates Advisory Board members, along with former Board member (and current Gold member) Fred Sasser.

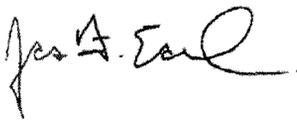
All of our companies have a strong interest in working with the AAR to insure that the rule making process continues to improve the safety, efficiency and cost competitiveness of North America's freight rail system. All participants in the process should be justifiably proud of the progress our industry has made over the years, and we are certainly supportive of continuing this strong record of achievement into the future. However, in order for this progress to continue, it is essential that the rule making process reflect the economic realities that all of our companies face, and appropriately allocate the costs of this continuous improvement in alignment with the distribution of the benefits.

Our group collectively would like to reiterate the comments previously submitted in writing by GATX's Terry Heidkamp on July 8, 2011. Those comments also included the initial Dissenting Opinion prepared by Tom Mordock and John Kieras dated December 22, 2010. Copies of those submissions are attached for your information. The essence of these comments is simply that in the rule making process it is essential that the costs of compliance with a new or modified rule be distributed in accordance with the allocation of the benefits of that new or modified rule. In simple terms, our group feels very strongly that the party that primarily benefits from the implementation of a new or modified rule should similarly pay its fair share for such rule implementation.

In addition, our group would like to again note the urgency associated with addressing the current imbalanced approach to AAR rule making and cost/benefit allocation. Clearly, we feel that this process has moved too slowly, and we note that every day the owners of railcars subject to the Interchange Rules are bearing costs that should be allocated to other participants in the transportation chain. This misallocation of cost continues to erode the economics of private railcar investment, which in the long-run will significantly reduce this important source of investment capital for the North American rail system.

As you know, a number of us have been able to talk with Tim Collins, the AAR's consultant on this project. Both individually and collectively, our group and the other private car owners who are Associate Members of the AAR stand ready to provide additional information or comments to Mr. Collins, you or other members of the White Paper development team to make sure that our views are fully and appropriately communicated. Please don't hesitate to reach out to any of us for further information.

Sincerely,



Jim Earl, GATX Corporation



Jack Thomas, First Union Rail Corporation



Patrice Powers, GE Capital Rail Services



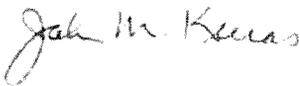
Bob Hulick, Trinity Industries Leasing Company



Gene Henneberry, Flagship Rail Services, LLC



Tim Stuckey, The Greenbrier Companies



John Kieras, Union Tank Car Company



Fred Sasser, Chicago Freight Car Leasing Company

cc: Mr. Edward R. Hamberger, President & CEO, AAR
Mr. Robert VanderClute, Senior Vice President, Safety & Operations, AAR

Comments Submitted by GATX's Terry Heidkamp on July 8, 2011

**Association of American Railroads
Paper on Process for Establishing Interchange Rules**

1) Background

- a. Several non-railroad car owners have requested equitable changes to the AAR rulemaking process that would require allocation of the costs of new or revised rules in accordance with cost/benefit estimates used by technical committees to justify rule changes. After a brief discussion of the issue at the May 2, 2011 TSWC meeting, the AAR was tasked to develop a "white paper" detailing the issue and recommending a path forward for the committee.
- b. Over the past several years, new rules for wheel replacement, side bearings, service interruption and truck hunting have been implemented based on projections of reduced derailments, reduced fuel costs, reduced track maintenance and other operating cost savings for railroads. In each case, prior to implementation of the new rules, non-railroad car owners requested rule modifications that would have allocated implementation costs in accordance with cost/benefit estimates. In each case, the comments were disregarded and the rules were implemented without changes.
- c. For example, in October 2010 the AAR Arbitration & Rules committee approved reducing the condemning threshold for truck hunting. This proposed rule change was then sent to the industry for comment October 25, 2010 in Circular C-11325. Additional costs associated with the change were projected at \$82.5 million over the first 15 years after implementation. The committee estimate projected that over 90% of the economic benefit of this rule change would accrue to railroads in reduced fuel costs.

On November 16, 2010 GATX submitted comments requesting "that implementation of the rule be postponed until a mechanism is established to require the railroads to pay an equitable share of the costs related to the proposed rule change." The committee implemented the rule on December 21, 2010 without any changes to the proposed rule. In the circular finalizing the new rule the committee advised that it "did act to continue reviewing the cost/benefit equation."

On December 22, 2010 the Arbitration & Rules Committee representatives for GATX and Union Tank Car submitted a formal dissenting opinion, see attached.

2) Relevant Regulatory Authority

- a. The Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Surface Transportation Board (STB) have comprehensive statutory authority to regulate nearly all aspects of the operation and maintenance of the nation's interstate railroads, including the car maintenance issues addressed by the AAR's Interchange Rules and the economic consequences of those rules. To date, the FRA, PHMSA, and STB have not chosen to exercise their plenary jurisdiction through agency rulemaking, but the STB has broad economic regulatory jurisdiction over "transportation by rail carriers...with respect to rates, classification, rules (including car service, interchange, and other operating rules), practices, routes,



James P. Grady
Assistant Vice President, Technical Services
Safety and Operations

October 3, 2012

Mr. Darrell R. Wallace
Executive Director
North America Freight Car Association
17884 Westhampton Woods Drive
Wildwood, MO 63005

Dear Mr. Wallace:

Please refer to your September 14, 2012 letter requesting, on behalf of the North America Freight Car Association (NAFCA) a "White Paper" from the Association of American Railroads.

Your letter notes that "NAFCA and its members believe the cost sharing and process issues that were raised when the changes to Rule 46 [of the AAR Interchange Rules] were finalized in 2011 need to be addressed and resolved without further delay" and the White Paper was purportedly to address the issue. The specific changes of concern to NAFCA were stated in your letter to be Rule 46.h modifying Truck Hunting Indexes.

Your letter regrettably reflects the confusion of some parties stemming from the adoption of Rule 46.h by the AAR Equipment Engineering Committee (EEC). As you may know Rule 46.h was proposed by the EEC on October 25, 2010 in Circular Letter C-11355. Unfortunately, while the explanation of the new Rule 46.h in C-11355 set forth the costs, the explanation only quantified the economic benefits and not those related to safety.

This has left the mistaken impression for some that the Rule was solely prompted by economic benefits to the railroads; and that concern has been raised by some private car owners who are members of the EEC and the AAR Technical Services Working Committee (TSWC) as well as other Associate Members of the AAR. (The EEC reports to the TSWC; and, as you may know, AAR Associate Members who are private car owners also have representation on both the EEC and the TSWC).

October 3, 2012
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In order to ensure that all stakeholders are operating from the same and complete set of facts upon which productive discussions regarding this issue can be based, the Executive Committee of the AAR Safety and Operations Management Committee (SOMC) has asked the AAR, through TTCI and under the auspices of the TSWC, to undertake the safety analysis that was not effected in 2010 and determine the safety benefits of the Rule. (The TSWC reports to SOMC and the SOMC Executive Committee is comprised of the Chief Operations Officers of the seven Class I railroads).

With the benefit of two years of experience, TTCI will also now have the opportunity to "audit" performance under the Rule to verify its conclusions from the safety analysis. Depending upon the results of the audit/analysis, the EEC and TSWC may revisit the 2010 decision regarding changes to rule 46.h modifying Truck Hunting Indexes.

This course of action will be reported to and discussed by the TSWC at its meeting on October 4, 2012. We expect that at the meeting the TSWC will provide any further refinement and guidance to TTCI as may be necessary for it to conduct the analysis/audit and also to establish the time table for the completion of the analysis/audit. I believe it is also important to note that the SOMC Executive Committee shares NAFCA's desire for an expeditious resolution of the concerns raised in your letter. In that regard, it is expected that the TSWC will set a schedule for the completion of the analysis/audit with the need for expedition in mind.

The AAR will share the results of the analysis/audit with the NAFCA after it has been communicated to the EEC, the TSWC and the AAR's Associate Members who are private car owners.

Since the AAR has had no communication with, or commitment to, the NAFCA regarding this matter, I assume NAFCA's perception of the issues and its reference to a "White Paper" in your letter, is based upon NAFCA's communications with some of its members who may also be AAR Associate Members. Whatever NAFCA may have heard about the content or structure of a "White Paper," please be advised that the course of action described above will be discussed at the TSWC meeting on October 4, 2012 as a process for addressing the concerns regarding Rule 46.h.

I hope the above information responds to your letter. In any event, I want to emphasize, on behalf of the SOMC Executive Committee as well as the AAR, that the railroads recognize the important contribution that private car owners make to the safe and efficient operation of the rail network. It is in the mutual interests of both the railroads and private car owners to work to address each other's concerns and the railroads stand ready to do so.

October 3, 2012
Page 3

Accordingly, the SOMC Executive Committee wishes to extend to NAFCA members an invitation to meet and discuss NAFCA's concerns. The SOMC Executive Committee currently is planning to meet in Washington D.C. in November. Please advise me if NAFCA members wish to meet with the SOMC Executive Committee and we will work on scheduling a time.

If you have any questions or if I can provide you with any more information at this time, please let me know.

Sincerely,

A handwritten signature in black ink that reads "James P. Grady". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James P. Grady



October 5, 2012

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SECRETARY
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Re: Request for Final "White Paper" on AAR Rule Changes

EXECUTIVE DIRECTOR
Darrell R. Wallace
North America Freight Car Association
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Dear Mr. Grady:

I am in receipt of your letter of October 3 responding to my letter of September 14. Contrary to your statements, NAFCFA and its members, who own or lease in excess of 600,000 private railcars, do not believe there is any confusion concerning NAFCFA's position, the Issues, or the underlying facts surrounding the 2011 modification to Rule 46.h and related matters. Beginning in 2011 you have made repeated representations to NAFCFA member companies who are Associate Members of AAR that AAR was preparing a "White Paper" or other document addressing their serious concerns about the appropriate allocation of costs and benefits associated with changes to the AAR Interchange Rules, and the deficiencies in the process for adopting such rule changes. As you have well known since late 2010, these are very important issues to those companies and to NAFCFA, such that we have been considering taking formal action to resolve them. Nevertheless, we elected to postpone taking such action in good faith reliance on your representations that AAR was addressing them internally in a White Paper for further discussion with private car owners. To learn now that you disavow the existence of a White Paper in favor of "the course of action" described in your letter is disturbing, to say the least.

More substantively, the claim of private car owners that little or no safety benefits resulted from the changes to Rule 46.h has been squarely before the AAR since the Fall of 2010 without any rebuttal or objection from AAR or any of its committees, so AAR's sudden decision to apparently analyze such benefits for the first time in response to my September 14 letter advising of probable litigation is somewhat suspect.

In summary, NAFC A is disappointed in your response to my letter of September 14, and we do not believe any of the statements or information in your letter warrant NAFC A diverting from its present course of action to attempt to resolve this matter.

Sincerely,



Darrell R. Wallace
Executive Director
North America Freight Car Association

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