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INDIANA HARBOR BELT RAILROAD COMPANY

2721 - 161ST STREET, HAMMOND, IN 46323-1099

January 24, 2010

Surface Transportation Board
Attn: STB Ex Parte No. 707
395 E. Street S. W.
Washington, DC 20423-0001

STB Decision Docket No. EP 707, Demurrage Liability

Advance Notice of Proposed Rulemaking (ANPR) regarding demurrage responsibility.

The following are the comments of the Indiana Harbor Belt Railroad (IHB) in regards to the above ANPR on EP 707 - Demurrage Liability.

The IHB which operates in the greater Chicago area is the largest switching and terminal railroad in the United States. The IHB operates approximately 54 miles of mainline track and 266 miles of sidings and yard tracks. The IHB connects with every class 1 carrier, many regional roads, and other short line carriers in the Chicago area.

The IHB provides switching service to over 140 active customers located in Northeastern Illinois and Northwestern Indiana. There are almost 50 of the above customers that the IHB services that can be designated as either warehouses or transload type facilities. These customers have located on the IHB based on proximity to the Chicagoland market and the IHB's access to multiple carriers, which opens their terminals as being accessible (through reciprocal switching arrangements) to receive and ship products from literally anywhere in North America.

When an industry locates on the IHB, the industry executes a side track agreement to establish certain legal rights, including division of ownerships, maintenance, liability, and other issues that need to be protected prior to service being established. The industry is also required to complete a credit application.

The IHB has always taken the position that the industry that is located on the siding that the IHB is servicing is fully responsible for all demurrage and storage charges associated with any cars that are delivered or pulled at their facility.

The IHB is not a party to any agreement or contract that the industry takes on in regards to performing services for other customers. The IHB does not hold any legal document that would provide the IHB with assurance that the outside concern is willing and able to take responsibility for the demurrage and storage charges.

The following comments are specific to each of the seven bullet points:



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Item One: The Intermediaries are the only parties to the transaction that can control all the steps of the transaction. The beneficial owner cannot order the spotting of the freight car into the facility, or control the unloading of the railcar, or the handling of the freight within the facility. Likewise the railroad has no ability to cause the operator to unload the cars in a timely manner. Only the intermediary that controls the facility can organize the efforts to receive the freight, unload the car and release the empty back to the railroad. It is the experience of the IHB that the Intermediaries do not accept freight without a formal notice or commitment, but only after their customer, the beneficial owner, has entered into a contractual agreement covering a wide variety of issues. It would seem that compensation for demurrage charges would be one item addressed during their initial contract negotiations. The intermediaries are the only parties that can gain demurrage credits for the timely release of freight cars, as they are the parties responsible for the maintenance, operation, and suitability of their siding and unloading facilities. In times of constrained capacity they are the natural referee as to which freight to receive and in what order to ensure the timely unloading and release of the equipment, as they are the best parties to have knowledge of the optimization of the unloading process.

The intermediary is also the local party to the transaction, with the scope of the global market place the beneficial owner of the goods may well be a foreign entity. Many warehouse and transload intermediaries are multinational or have international reach. Most short lines and terminal railroads do not have an international presence or business expertise, thus giving foreign beneficial owners an unfair ability to avoid payment for demurrage, by fact of the potential cost of enforcing the carrier's rights and collection efforts in venues where success is anything but certain.

Item Two: The IHB does not have the information or documentation to prove who the responsible party is for the product being shipped or received. The IHB as a reciprocal switch carrier is not a party to the original bill of lading and is not shown in the interline routing of the car on the bill of lading or waybill. When receiving traffic for delivery to an IHB industry, the complete EDI waybill information is normally suppressed during the transmission, providing the IHB with only basic delivery information and excluding key data such as the consignor, origin station, beneficial owner, payer of freight etc. On outbound traffic that IHB is scheduled to pull from our industry, the IHB receives a 404 or 417 EDI transmission from the first line haul carrier, with consignee, destination, and other important data fields routinely suppressed.

The system work necessary to the current rail carrier's EDI system in order to provide the full waybill information to all parties would have to be studied as to both its economic impact and the timeframe for making the necessary system changes.

Some commodities are actively traded on commodities markets and may pass through several brokers and beneficial owners prior to arriving at the final destination. Who would be responsible for updating the waybill information after each of these transactions? How will the delivery carrier be assured that the waybill information is truly accurate? What happens in the case where title to the goods changes while the car is on constructive placement? Who is responsible for tracing the demurrage responsibility?

Item Three: While the requirement for filing rate tariffs has been eliminated, most rail carriers issue a demurrage tariff or subscribe to an "agency tariff" such as ASLG 6004. The rules of, and responsibility for demurrage is and can be plainly set forth for all to see in the appropriate demurrage tariff. Demurrage responsibility can also be address in the sidetrack agreement entered into between the carrier and the intermediary. The STB by establishing that the receiver of freight is responsible for the demurrage on cars destined to their facility, would remove all ambiguity and forces the facility to address responsibility for demurrage in their master contract with the beneficial owner, broker or other entity which directed the freight to that particular location.



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Item Four: The IHB is not a party to the various agreements entered into between warehousemen, transloaders or other parties that allow other parties to use their facilities for the transfer of freight. The IHB and most terminal switching carriers and short lines would not have the resources or expertise to evaluate, monitor, police, or maintain records of the existing or potential agency relationships of our customers. We are further concerned that the collection and maintenance of such files would entail a security risk at best and possibly a violation of statute at worse.

Item Five: The discussion of Hub City and Hall should only be focused on the freight rates which can vary in many ways depending on such factors as weight, commodity description, type of car used, size of shipment etc. whereas demurrage charges are much more uniform and the application less complicated.

Item Six: The key difference is that a beneficial owner can ship freight on a Collect basis to an intermediary without the intermediary's knowledge, the intermediary has the option of accepting the freight and ergo responsibility for the freight charges or rejecting the shipment and all liability for it. The intermediary's desire to refuse liability is consistent with his refusing the creation of value (revenue) that accepting the freight entails.

In the case of demurrage on freight accepted at the intermediary's location the intermediary's acceptance of the freight and the value created by his handling of said freight (revenue) is in conflict with his desire to absolve himself of the cost of gaining that value (revenue) by refusing liability for demurrage.

The IHB has experienced situations where freight has moved on a spot basis and left physical control of the IHB prior to invoices being presented. The invoices were not honored and with the parties and freight beyond the reach of the IHB, we were left with the only recourse of initiating legal action that would incur cost greater than the revenue to be collected. If Groves was accepted as the industry norm we believe that the velocity of many shipments would be extended greatly while responsibility for charges was ascertained and payment received or guaranteed.

Item Seven: We feel the finding in Middle Atlantic is not valid. The warehouseman has a large financial incentive to maintain his relationship with his customers, failure to be able to meet their needs can cause the beneficial owner to seek other or additional intermediaries which will result in lost revenue for the warehouseman. If the warehouseman can in effect stretch his facility by holding freight in railcars in the carrier's yard and not be required to compensate the providers of the equipment and the carrier, he is unjustly protecting his revenue stream at the expense of the equipment owners and the serving carrier. This unjust enrichment also extends to other shippers (indeed maybe to his competitors) who's freight is delayed by the congestion that is created, and may well have benefitted from being able to provide the beneficial owner with services.



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In summary: The industries the IHB serves have complete control of their own siding. They provide the switch order in regards to which cars and how many cars they will accept for each switch. The industry may have cars for multiple customers and have limited space to receive this traffic, leaving the industry itself to decide which customer has priority for space on their siding. The IHB lacks the expertise to perform a similar function should each beneficial owner insist that they have the right to order cars into the industry based on their responsibility for demurrage charges.

The industry is potentially able to utilize demurrage credits earned on one customer's traffic to offset debits accumulated on another's customer's traffic.

IHB as a common carrier is obligated to deliver traffic to an industry that has established credit with our company, if the industries customer has not established credit, the IHB would hold the cars until credit and account responsibility is established. This delay would fly in the face of the intent of SS 10746.

Due to the numerous concerns that the IHB has brought forth above, the IHB strongly opposes the establishment of a rule or policy statement which would require the carriers to bill the consignee/consignor or beneficial owner for any demurrage and storage charges associated with their product.

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