STB DOCKET NO. 42068

CAPITOL MATERIALS INCORPORATED–PETITION FOR DECLARATORY ORDER–CERTAIN RATES AND PRACTICES OF NORFOLK SOUTHERN RAILWAY COMPANY

Decided April 9, 2004

The Board finds that: (1) the demurrage charge in this proceeding and Norfolk Southern Railway Company's (NS) method for calculating demurrage is not unreasonable; and (2) none of NS's specific actions constituted an unreasonable practice.

BY THE BOARD:

This declaratory order proceeding arises out of a court action in *Norfolk Southern Railway Co. v. Capitol Materials, Inc.*, Civil Action No. 2000CV25039, filed in the Superior Court of Fulton County, Atlanta Judicial Circuit. The court proceeding was initiated by Norfolk Southern Railway Co. (NS) to collect from Capitol Materials, Inc. (Capitol) $216,930 in unpaid demurrage charges assessed for shipments of wallboard received at Capitol's facilities in Atlanta and Duluth, GA, from June 1997 through February 2001.

Capitol filed a motion to stay the court proceedings and refer the following issues to the Board for determination: (1) whether NS's demurrage charge as contained in its applicable tariff is itself unreasonable; (2) whether the method by which NS calculates the demurrage charge is unreasonable; and (3) whether NS's practice of assessing the demurrage charge in the circumstances at bar represents an unreasonable practice. In an order dated August 27, 2001, the court granted the motion and referred the above matters to the Board for review and decision.

The Board instituted a proceeding to address the controversy and adopted a procedural schedule for the submission of written statements. Capitol filed its opening statement on April 1, 2002. In a subsequent decision served on April 19, 2002, a protective order was issued and the procedural schedule was extended to allow Capitol to file a supplemental opening statement. Capitol filed its supplemental statement, NS filed a reply, and Capitol filed a rebuttal statement. Each party filed additional pleadings, which are accepted into the record.

BACKGROUND

Capitol supplies gypsum drywall and related materials to the construction industry from its facilities in Atlanta and Duluth. Capitol uses rail service for

delivery of inbound shipments of these commodities from suppliers at five primary locations in the United States and Canada.

Capitol submits that NS has made numerous changes both in the terms of its applicable demurrage tariffs and in its method for calculating demurrage. Because these changes were made without its consent, Capitol argues that the assessment of any charges for demurrage that allegedly accrued from June 1997 through February 2001 represents an unreasonable practice. Under the circumstances, Capitol asserts that NS's demurrage charges should be found void, inapplicable, or unreasonable as applied by NS against Capitol.

DISCUSSION AND CONCLUSIONS

Demurrage is a charge that both compensates rail carriers for the expenses incurred when rail cars are detained by shippers and serves as a penalty for undue car detention (to encourage the efficient use of rail cars in the rail network). *See Chrysler Corp. v. New York Central R. Co.*, 234 I.C.C. 755, 759 (1939). Demurrage charges are subject to Board regulation under 49 U.S.C. 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices. In addition, pursuant to 49 U.S.C. 10746, rail carriers must compute demurrage charges, and establish rules related to those charges, in a way that will facilitate freight car use and distribution and promote an adequate car supply. Demurrage cases are rare because carriers and shippers are typically able to work out these matters.

In general the principle underlying demurrage is quite simple. When a shipper utilizes a railcar, that shipper is taking up a railroad asset — the use of that railcar. As a result, a railroad has a right to set a reasonable time for a shipper to finish using that asset and return it to the railroad. If a shipper keeps the asset for too long, then it should compensate the railroad for the extended use of its railcar — in other words, for demurrage.

Equally simple, however, is the notion that a shipper should not be required to compensate a railroad for delay in returning the asset if the reason for the delay is not the shipper's, but the railroad's fault.

Many railroad tariffs assign demurrage charges to the shipper on a no-fault basis. In other words, the shipper is liable for demurrage charges regardless of which party was at fault for delay. In practice, however, many railroads have not always enforced these provisions uniformly, and instead have allowed shippers relief from demurrage charges when carriers' car handling is at fault for the delay. As a result, demurrage disputes, when they arise, can be very difficult to resolve.

In light of the technological advances that have been made with respect to railroad operations in recent years, it might be appropriate for railroads to reconsider some of their longstanding demurrage practices under which delivering railroads charge their customers demurrage regardless of the reasons for delays. The widespread use of computers and sophisticated tracking systems now allow railroads to determine the location of rail cars in the rail system with more precision. It would seem that in-transit delays and other anomalies that could interfere with time-of-delivery expectations would

likely be known as well. But for past charges, the law is well settled, and so the Board will examine the issues here under existing law.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. In this case, the Board resolves the first two issues referred by the court, by finding that the demurrage charge itself and NS's method for calculating demurrage are not unreasonable. As to the third issue, the record here does not permit the Board to find that any of NS's specific actions constituted an unreasonable practice. However, whether some relief may be warranted because in particular circumstances NS's actions were contrary to a mutual understanding of the parties based on a longstanding pattern of conduct is a factual matter for the court to address.

The Applicable Demurrage Provisions.

The record in this proceeding establishes that Capitol and NS have been party to two "average demurrage agreements" since 1986: one applicable to Capitol's Atlanta facility, and the other covering its Duluth facility. Under an average demurrage agreement, a shipper earns credits for cars that it releases early, before the end of the allowable "free time" ("free time" generally allows a shipper up to 24 hours for loading and up to 48 hours for unloading a rail car). These credits can be used to offset demurrage charges for other cars that are not released until after the allowable free time has expired. Unlike "straight" demurrage — under which no credits are available for early release of cars but relief can be available for problems such as "bunching" (described below) — under an average demurrage agreement the shipper is excused from demurrage charges only if a car is delayed by an extraordinary event like a flood, earthquake, tornado or hurricane.

In 1986, when Capitol and NS entered into their average agreements, the actual demurrage charges and other terms to be applied under the framework of the average demurrage agreements were set forth in Freight Tariff PHJ-6004-O, H.J. Positano, Agent, an industry-wide demurrage tariff in which numerous railroads, including NS, participated. In 1997, NS withdrew from the industry-wide demurrage tariff and replaced it with demurrage tariff publications applicable just to NS: Tariff NS 6004 (in effect from June 15, 1997, to February 29, 2000); Tariff NS 6004-A (in effect from March 1, 2000, to September 14, 2000); and Tariff NS 6004-B (in effect since September 15, 2000).

Capitol asserts that the average demurrage agreements are not valid because they were executed by the Southern Railway Company (Southern) and there is no indication that the agreements were assigned by Southern to NS. But when Capitol entered into the average demurrage agreements in 1986, Southern was a subsidiary of Norfolk Southern Corporation. *See Norfolk S. Corp.–Control –Norfolk & W. Ry.*, 366 I.C.C. 173 (1982). Southern subsequently changed its name to Norfolk Southern Railway Company. *See Southern Ry.–Control Exemption–Norfolk & W. Ry., et al.*, Finance Docket No. 31791 (ICC served January 14, 1991). Thus, there was no need for an assignment since the same entity was involved.

To support its position that the average demurrage agreements were not applied to it in the past, Capitol claims that it has never received any credits under the average demurrage agreements for cars released before the expiration of free time. But Capitol's own evidence refutes this claim. For example, the demurrage bill for Capitol's Atlanta facility for the month of March 1998, which was attached as Exhibit 1 to the initial verified statement of Jeff Traicoff, confirms that Capitol's demurrage was calculated under the average demurrage method, including a computation of accrued debits and credits for the month. Capitol earned and received five credits for early releases of cars during that month.

Capitol also questions whether Tariffs NS 6004, 6004-A and 6004-B are successors to Tariff PHJ-6004-O, H.J. Positano, Agent, the tariff that is referenced in Capitol's average demurrage agreements. But the record in this proceeding clearly establishes that they are.

Thus, during the period covered by the complaint (from June 1997 through February 2001), the demurrage provisions applicable to Capitol's facilities are set forth in the average demurrage agreements, with specific demurrage charges and other terms determined by reference to Tariff NS 6004 (from June 15, 1997, to February 29, 2000); 6004-A (from March 1, 2000, to September 14, 2000); or 6004-B (since September 15, 2000).

Reasonableness of the Charges.

The first count of the court's referral is whether NS's demurrage charge is unreasonable. As Capitol notes, NS has increased its demurrage charges from $20 per day to $60 per day.[1] But Capitol has not attempted to show that the level of these charges is in itself unreasonable. And the Board has no other basis here upon which to find the level of these charges unreasonable. Indeed, as NS points out, NS's demurrage tariffs are similar to demurrage tariffs of many other railroads. An examination of other demurrage tariffs cited by NS shows that, in the last several years, the following carriers began charging demurrage on an average demurrage agreement basis and increased the level of their demurrage charges: (1) CSX Transportation, Inc. (CSXT Tariff 8100, reflecting charges of $60 per day); (2) The Burlington Northern and Santa Fe Railway Company (BNSF Demurrage Book 6004-A, reflecting charges of up to $75 per day); and (3) The Kansas City Southern Railway Company (Tariff 6000B, reflecting charges of $50 per day).

The second count of the court's referral is whether the method provided in the tariff for calculating demurrage charges is unreasonable. But again, Capitol has not attempted to show that the method of calculating charges is unlawful, and there is no other evidence that would lead to such a conclusion. Rather, Capitol's argument as to this issue really reflects nothing more than Capitol's dissatisfaction with NS's heightened attentiveness to keeping track of its cars and keeping them moving or collecting demurrage, where applicable, when cars do not move.

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[1] Supplemental Opening Statement at 10.

Capitol's complaint as to both the level and the method of calculating charges is largely that NS changed its rates and practices without consulting with its shippers. The Board certainly prefers that railroads and shippers and receivers work closely on service issues, including how such issues will be addressed. However, the law gives a railroad the right to set its own rates and charges (49 U.S.C. 10702).

Unreasonable Practice Claims.

What Capitol does attempt to show here is that NS's collection of specific demurrage charges from Capitol constitutes an unreasonable practice under 49 U.S.C. 10702. It offers two basic arguments for this claim. The first is that NS's insistence that Capitol submit written claims for disputed demurrage charges was unreasonable in light of what Capitol claims had been a course of conduct by NS not to enforce that provision of its demurrage tariff as to Capitol. The second is that NS's assessment of demurrage under particular circumstances was an unreasonable practice.

a. *Written Claim Requirement.* Under NS's tariffs, shippers are required to submit a timely, written claim for any disputed demurrage charges, stating the conditions for which relief is sought.[2] Capitol does not argue that the written claim requirement is itself unreasonable, but it contends that the long course of dealing between the parties has resulted in a mutual departure from the strict terms of the tariff and a waiver of the requirement that Capitol submit written claims for demurrage relief. Rebuttal at 5, 13; Reply to Surreply at 3. Capitol suggests that, before 1999, no NS representative advised Capitol that it must submit a formal written claim for relief from demurrage charges. Reply to Surreply at 7. Capitol also asserts that, in the past, it received relief from charges in response to its verbal claims for relief. Rebuttal at 13.

NS denies that it ever agreed to depart from the written claim requirement. To the contrary, NS asserts, and cites examples to show, that far from waiving the written claim requirement, NS repeatedly reminded Capitol of that requirement and encouraged Capitol to follow it, but that Capitol refused to do so. Surreply at 3-4. Furthermore, NS states that Capitol's claim that representatives of NS stated that NS would not consider any claim for relief based on missed switches, even if presented in writing, is not true. *See* Surreply at 5. NS concludes that, given Capitol's failure to provide the required written claim, there is no basis for Capitol's attempt now to demonstrate through scattered examples of car placements that demurrage should not have been assessed, and that it is neither necessary nor appropriate to attempt to address and refute each of the examples alleged in Capitol's statements. Reply at 16.

When railroads were heavily regulated, the "filed rate doctrine" required them to adhere strictly to the tariffs that were on file with the Board's

[2] *See* Tarriffs NS 6004, Items 1205, 1210, 1215; NS 6004-A and -B, Item 400.

predecessor, the Interstate Commerce Commission (ICC), and it precluded any side agreements that would supersede filed tariffs. *See Louisville & Nashville R. v. Maxwell*, 237 U.S. 94 (1915). Since 1980, however, railroads have been expressly authorized to enter into individual contracts that can override tariff provisions, and since 1996 there has been no requirement that railroads file tariffs with the Board or even have tariffs. Thus, notwithstanding the requirements of NS's tariff, NS could have a separate agreement or understanding with a particular shipper to waive the written claim requirement.

While NS presents evidence (*see* Surreply at 3-5) that its employees discussed the written claim requirement of the tariff with representatives of Capitol on numerous occasions, Capitol claims that, either through its historical way of dealing with Capitol, or through something that was said or done more recently, NS agreed to depart from these requirements. If these assertions are true, then Capitol may be correct that it is not liable for those charges. Whether or not there was a departure is a question of fact, and the court may be in a position to make a factual determination as to whether the parties had such an agreement or understanding to disregard the written claim requirement in certain instances, and to take that into consideration in determining what disputed demurrage charges NS may be permitted to collect.

b. *Specific Circumstances*. Capitol contends that NS's assessment of demurrage is an unreasonable practice under the circumstances here because of NS's: (1) practice of delaying rail cars in transit, thereby contributing to "bunching" of rail cars; (2) unilateral decision to provide a single switching time per day, on specified days of the week; (3) failure to maintain consistent switching times; (4) failure to timely remove released rail cars from Capitol's yards; (5) failure to follow standing placement instructions to deliver rail cars as soon as they arrive in NS's rail yard; and (6) unilateral decision to assess demurrage from the date that a car is constructively placed rather than the date that the car is actually placed at one of Capitol's facilities for unloading.

Whether a particular practice is unreasonable typically turns on the particular facts. The record in this case does not demonstrate that NS's practices in general were unreasonable. However, there may be individual instances, which the record here does not permit the Board to determine, where the imposition of demurrage charges was improper even under the average demurrage rules or where, as discussed above, the parties may have had a side arrangement not to apply demurrage charges based on their past course of conduct and dealings with each other.

The following is a discussion of Capitol's specific allegations.

1. *Bunching*. Capitol's first claim of unreasonable practices relates to deliveries arriving in a bunch. Capitol states that it orders product for delivery on a daily basis and spreads its orders throughout the month to try to achieve a reasonably smooth flow of rail cars to it. However, it asserts that sometimes the cars are not delivered in a smooth flow, but rather arrive in one large group. Although demurrage rules allow a shipper 48 hours of free time to unload a car before any demurrage charges accrue, Capitol complains that it

cannot unload cars delivered in a bunch within the free time. Capitol argues that it is not appropriate for NS to assess demurrage when a bunch of cars come in at once due to poor routing by the railroad, breakdown, and other problems that occur en route. Traicoff, Opening V.S. at 9.

In reply, NS notes that the relevant tariffs specifically address bunching. Tariff NS 6004 disallows adjustments for bunching "except when bunching has been caused by floods, earthquakes, hurricanes, or tornadoes and conditions in the devastated area resulting therefrom, or strikes of railroad employees, and cars are subsequently delivered to consignee in accumulated numbers," for shippers under an average demurrage agreement, and Tariffs NS 6004-A and -B expressly provide that "bunching of cars will not be considered as a railroad error." *See* Item 400. NS further submits that railroads cannot reasonably be required to provide customers with precisely scheduled service because transit times from a particular origin to destination can vary significantly through no fault or "error" of the delivering railroad.

Here, Capitol's claims as to bunching are not supported with specific evidence. And given the many variables outside a railroad's control that may affect delivery — NS, for example, cites delays at any point in the rail network, including points in Canada — a railroad cannot reasonably be expected always to be able to meet an ideal delivery timetable. It is possible that the parties may have had a side agreement or understanding setting forth certain expectations as to bunching. But otherwise, bunching relief is normally excluded under an average demurrage agreement,[3] and Capitol has not shown any basis here for finding that NS's bunching of cars at some unspecified time was unreasonable.

2. *Switching.* Capitol's second, third, and fourth claims of unreasonable practices relate to the switching of cars at Capitol's facilities. Switching refers to the delivery of loaded rail cars to the shipper's facility and the removal of empty rail cars by the carrier from the shipper's facility. In this case, the rail cars destined for the Duluth facility are first taken to NS's Chamblee Yard, and rail cars destined for the Atlanta facility are first taken to NS's South Yard in Atlanta. NS provides one switch each weekday, except holidays, at each facility. According to NS, the switching crew generally arrives at Capitol's Duluth facility between 11:00 a.m. and 1:00 p.m. and at Capitol's Atlanta facility between 1:00 p.m. and 3:00 p.m.

According to Capitol, its Duluth facility can accommodate six rail cars at one time; and, since 1998, the Atlanta facility has had four receiving locations for rail cars. Capitol states that it is able to unload a rail car at either location in 30 minutes, that it has verbal standing orders for NS immediately to deliver all rail cars as soon as they arrive in NS's rail yard, and that it has not held cars that were spotted for unloading except in extraordinary and extremely rare circumstances. Although Capitol's operations can handle more, Mr. Traicoff of the Atlanta facility submits that NS made a unilateral decision at

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[3] *See Illinois Central*, 702 F.2d 111, 114 n.8 (1983); *Oliver Mfg. Supply Co. v. Reading Co.*, 297 I.C.C. 654 (1956).

some point to provide only one switch a day, and no longer to provide service on Saturdays, Sundays or holidays. Capitol contends that this switching limitation impacts its operations and causes car back-ups, particularly at times when cars are received in bunches.

In addition, Capitol asserts that the switching times vary over periods of 3 hours or more and occasionally the switch is made as much as 12 hours earlier or later than the "normal" time, without notice to or input from Capitol. Because the timing of the switches is not predictable during any given 24-hour period, Capitol argues that it cannot effectively schedule its unloading crews and, consequently, if Capitol misses one day of unloading due to the erratic timing of the switch, a "domino effect" occurs, resulting in the back-up of an entire progression of car deliveries. Capitol submits, however, that, if the switches were uniformly and consistently made at whatever times NS chose to designate, Capitol would be able properly to schedule its work crews.

In reply, NS states that it is under no obligation to provide more than one switch a day. NS submits that providing one switch every weekday to each facility is the standard of service provided to the vast majority of shippers, not only by NS but by all other major railroads. According to NS, only a small percentage of its customers, typically the very largest shippers, receive more than one switch per day and they generally are charged for those additional switches. NS notes that, during an April 14, 1999 meeting held to discuss the demurrage issues, NS suggested that Capitol could request extra switches but that it would likely be charged for that additional service.[4] In any event, NS submits that its tariff provides shippers the opportunity to seek relief from a demurrage charge that results from an occasional missed switch if the shipper submits a timely and supported written claim. *See*, *e.g.*, Tariff NS 6004B, Item 400 at 4(a). NS asserts that Capitol has never requested an extra switch or submitted a written claim for relief.

NS also points out that a variation of a few hours in the time of day in which the daily switch is accomplished would not in itself provide a basis for relief because: (1) NS's demurrage charges are accrued by the day, not by the hour; and (2) NS is not obligated to provide its daily switch at a specific fixed time.

Finally, NS states that it conducted an extensive review of Capitol's Atlanta facility account in 1999 and voluntarily adjusted certain outstanding demurrage charges downward (from $26,480 to $13,190) to give Capitol every benefit of doubt regarding possible "run-around" (run-around occurs when the railroad actually places recently received rail cars at the shipper's facility for unloading ahead of cars that are already holding in the rail yard) or "missed switching" charges. Reply at 12; Reply, Marshall V.S. at 3. However, NS asserts that Capitol has refused to pay even the voluntarily reduced amount.

On this record, there is not sufficient evidence to support a finding that NS engaged in an unreasonable practice by not switching cars more frequently. Many railroads provide shippers of Capitol's size with just one

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[4] Reply at 4; Reply, Rasche V.S. at 3.

switch per weekday. While it might be unreasonable in certain circumstances for a railroad not to provide more frequent switches, Capitol has not shown that this is such a case.

There is also not sufficient evidence to find that NS engaged in an unreasonable practice here by not switching cars at a more regular time of day. Given the many variables outside a railroad's control that may affect delivery, a railroad generally cannot be expected to deliver cars at the same time every day. Again, there may be individual situations in which a railroad may be able to provide a more regular service and in which it might be unreasonable for it not to do so. But Capitol has not shown that this is such a case.

There could also have been an understanding between the parties in this case to excuse demurrage when deliveries are not regular enough. If that is the case, the court may find that Capitol is excused from paying certain of the demurrage charges. And even absent such an agreement, there may be situations in which the court could find that demurrage charges were not properly applied even under the normal terms of average demurrage (e.g., where demurrage was applied even though a car was released within the period of free time). However, the record here does not demonstrate any specific instances in which the tariffs at issue were applied incorrectly.

3. *Placement*. Capitol's last two claims regarding unreasonable practices relate to how and when NS places cars at Capitol's facilities. Placement is defined as delivery of a loaded car to a customer. There are two kinds of placement in the rail industry — actual placement and constructive placement.

Actual placement occurs when the railroad actually places a rail car in a position previously designated by the shipper. Actual placement starts the 48-hour period in which the shipper must unload the car before demurrage starts to accrue. Under the tariffs at issue here, demurrage begins when the free time expires and accrues until the shipper releases the car. Of course, if the shipper releases the car within the free time, it accrues no demurrage. *See* Tariff NS 6004, Item 345; Tariffs 6004-A and -B, Item 200.

Constructive placement occurs when a railroad car cannot be actually placed at the shipper's facility because of a condition attributable to the shipper (such as no room on tracks in the shipper's facility) and the railroad holds the car (either at its destination or at another available point) and then sends notice of the hold to the shipper. Constructive placement is contemporary industry practice, and is not unreasonable when the physical capacity of the receiver is insufficient to accept the number of cars available. Under the tariffs at issue here, demurrage begins to accrue on constructively placed cars when placement instructions to NS are not received before 0001 hours of the day after the railroad sent the notice. *See* Tariff NS 6004, Item 350; Tariffs NS 6004-A and -B, Item 200.

Capitol contends that, prior to 1997, NS would charge demurrage only for cars that Capitol held at its facility longer than the allotted free time based upon the actual placement date of the cars. In 1997, however, NS began the practice of issuing constructive placement notices and charging demurrage based upon the constructive placement.

Further, Capitol asserts that NS's own bills indicate that it repeatedly charged demurrage on rail cars for which there is no indication of an actual placement date. To illustrate, Capitol cites two examples where bills showed the date rail cars were constructively placed at the Atlanta facility, but did not show the actual placement date for the rail cars. Rebuttal at 8. Capitol argues that it should not be assessed demurrage when there is no indication of an actual placement date, because, without the actual placement date, it is impossible to determine whether the rail car was "buried" at the rail yard or otherwise the subject of "run-around," which Capitol believes should be considered in evaluating railroad error. Reply to Surreply at 14.

As noted, demurrage is calculated from the date that a rail car is placed, either actually or constructively, and continues to accrue (subject to any nonchargeable days) until the rail car is released by the shipper, regardless of the date that it is actually picked up by the railroad. While Capitol may be unable to determine, without the actual placement date, whether a rail car was run-around at the rail yard, run-around is not a "railroad error" that would warrant adjustment under the average demurrage tariff, unless the parties had a specific understanding, as they had here, that it would be. *See* Tariff NS 6004-A and -B, Item 400. Thus, a bill containing a constructive placement date and a release date, but not the actual placement date, is a valid bill. If, however, the court should find that the parties here had an arrangement or practice that demurrage would accrue only as of actual placement or not to charge demurrage in the case of run-around, the court could provide relief based on that agreement.

One other placement matter warrants discussion. Capitol argues that NS has arbitrarily assessed demurrage charges for rail cars that it constructively placed when space was available at Capitol's facilities, despite Capitol's verbal standing orders for NS immediately to deliver all rail cars as soon as they arrive in NS's rail yard. Supplemental Opening at 9. In fact, Capitol asserts that both facilities receive constructive placement notices on virtually every car. Traicoff, Rebuttal V.S. at 11; Mueller, Rebuttal V.S. at 4. NS has not directly responded to this allegation, other than to assert that there is no verbal standing order to deliver rail cars immediately and that it has no legal duty to do so.

As previously stated, according to its tariff,[5] NS cannot issue a constructive placement notice unless "a car cannot be actually placed because of a condition attributable to the consignor or consignee." Thus, NS cannot claim demurrage for any bill based on constructive placement unless the constructive placement notice was properly issued for proper reasons. If the court should find that NS was improperly issuing constructive placement notices when space was available at Capitol's facility, or if it finds that by practice Capitol was excused from its obligation to give NS a contemporaneous written claim of the problem due to the parties' course of conduct, then the court could determine that demurrage was inappropriately assessed in such circumstances.

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[5] Tariff NS 6004, Items 345, 350; Tariffs NS 6004-A and -B, Item 200.

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

It is ordered:

1. This proceeding is discontinued.
2. All filed pleadings are accepted into the record.
3. This decision is effective on its service date.
4. A copy of this decision will be mailed to:
   The Honorable Stephanie B. Manis
   Superior Court of Fulton County
   Atlanta Judicial Circuit
   185 Central Avenue S.W.
   Atlanta, GA 30303
   RE: No. 2000CV25039

By the Board, Chairman Nober.