STB Chairman Martin J. Oberman
Rail Trends
November 16, 2022

It's good to be back here at Rail Trends. It's a great conference for sharing points of view about the critical railroad industry and in particular about how the industry is performing, but most importantly about how it ought to be performing.

Several speakers said positive things about the Board: team effort, whole is greater than sum of part. Speaking for myself, I think it is the best board one could have.

We have already heard from expert analysts and consultants pointing out the path forward, and their analyses have been on target. I'm going to focus a little more on how we got to where we are as a way to underscore the importance of that future path.

In all the time I have spoken publicly since joining the Board, I have never assumed anyone is actually paying much attention to what I say, or whether it was having much of an impact. Then the leader of one of the major shipping organizations called me a few weeks ago and pointed out that since I became chairman, four of the seven Class I CEOs have retired. But then I'm also reminded by my friend, Patrick, that correlation is not causation, and so I'm sure it's pure coincidence. Nevertheless, I'm going to share my views.

This has been a particularly demanding year for the STB members and staff—primarily because in addition to reviewing the largest proposed Class I merger in more than 20 years and hearing the significant case of first impression involving Amtrak's seeking to re-start service along the Gulf Coast, we have had to contend with the Class I service meltdown—or "service crisis" as one of your presenters here accurately labeled it—which had been brewing since even long before the pandemic, but really came to a head this past spring and is not close to being resolved. To be fair, this year's failures are focused on what we often refer to as the "Big Four:" UP, BN, CSX, and NS. The other three have not presented such acute issues.

The major problems for the economy generated by the service crisis, along with the data revealed as a result of the Board's decision last May to initiate intense monitoring of the progress, or lack thereof, by the big four in addressing the crisis have caused me to step back and reflect on why we even have an STB, why am I doing this job, and even, why do we need railroads in the first place. And while the answer should be obvious, I'm not sure that all of us, including myself, don't from time to time lose sight of the big picture.

The reason we are here is not to make sure the average network velocity is creeping up by .5 mph each month or that the dwell time is creeping down or to count the painfully slow progress being made by the railroads in their attempt to find new employees to drive trains and work in yards or to see how far the Class I's can lower their OR, as though it were some kind of contest.

The obvious reason for why the public interest requires the existence of the railroads is that unlike many other parts of the private sector, the country's economy cannot thrive without the railroads functioning at a robust level, functioning in my view at what ought to be their optimal potential.

Indeed, last September, the AAR did the country a favor by updating and documenting in great detail how central the freight railroads are to the very existence of our national economy. Their report underscores how crucial the railroad industry is to the well-being of the U.S. and details the enormous amount of commodities that are moved by railroads, and in reality can only be moved by railroads. And if railroads are as crucial as the AAR tells us, then their failure to live up to their potential is costing all of us.

And the obvious reason that the STB exists is that these railroads have become effective monopolies, or at best duopolies, under the present legal structure.

As human nature tells us—and indeed as the railroads have proven to us—monopolists cannot be expected to serve the best interests of the economy and therefore the public—as distinguished from serving solely the profit interests of their owners—without oversight by a public agency whose job it is to ensure that the public interest is protected.

By the way, this last point was not part of the AAR report.

How do we measure how important the railroads are to our economy? For simplicity's sake and solely for purposes of today's presentation, I am going to assume that my friends at the AAR are correct when they tell us that a rail strike, or a lockout, would cause a loss to our economy of $2 billion per day. No one has an exact measurement but that seems as good as any to make the point.

When I look at the facts on the ground over the past 2 ½ years, the industry has been suffering the equivalent of a partial lockout by the carriers created by their choice to drop more than 10% of their workers since the beginning of the pandemic in March 2020—a choice which has caused significant damage to the economy by any measure but which we can estimate using the AAR's claim of a $2 billion loss from a total work stoppage as a measuring stick.

Here's what we know:

Long prior to the pandemic, between January 2016 to February 2020—the month before the pandemic struck in full force—Class I railroads had reduced their workforces by 29,000 workers, from 156,602 employees to 127,634, an 18.5 percent reduction. That reduction put the railroads in the position of having lost most, if not all, of their cushion—or "resiliency" as they like to call it—to respond to the inevitable disruptions which occur in railroading from natural disasters and other forces.

So when the railroads try to excuse their failures by pointing to labor shortages suffered by other businesses, they are wrong on two counts: One, other businesses did not enter the pandemic having stripped themselves of nearly 20% of their workers in prior years and leaving no cushion; and two, at the start of the pandemic plenty of industrial firms—including the kind of firms who are rail customers, such as the major grain producers, chemical companies, food processors—made the careful decision to play the long game and retain all of their employees so that they would be there when demand returned, even if it meant a temporary hit to their profits.

In stark contrast, the very profitable railroads made the opposite decision to the detriment of the entire US rail network. Precipitously and dangerously, they chose to continue the massive reduction in workforce they had undertaken in the previous few years. Between March and August of 2020, the Class I's cut another 10,000 jobs, dropping the employment level to 117,764—which, by the way, is more employees than they currently have on staff.

But the workforce reductions did not stop there. Despite the significant economic recovery and increased demand for freight beginning in mid-2020, the railroads continued to bleed employees. Another 3,271 employees were gone by the end of the 2021.

Thus, even accepting for the moment that the employment level of 127,600 just prior to the beginning of the pandemic was appropriate—an assumption which most certainly should not be accepted—the already dangerously-low employee headcount continued to drop by more than 13,000 over the next 21 months—or a reduction of another 10%.

For the purpose of measuring economic loss, I have a hard time distinguishing this behavior from what is effectively, after March 2020, the equivalent of a lockout of 10% of Class I employees.

And there is no question that by mid-2020, the Class I's were falling further behind in both the quality and quantity of their service with service really falling off a cliff in the 4th quarter of 2021 and the 1st quarter of 2022. These problems were amply documented in the emergency hearings we conducted at the Board last April, and it is beyond question that they were the direct result of the intentional reductions in work forces.

Not only shippers and labor representatives but the Class I executives themselves publicly testified that the service crisis resulted from major crew shortages, continuing significant worker attrition, and what they described as the huge hurdles they face in trying to hire workers to replace the thousands they had laid off.

These are not just abstract ideas. This reduction in work force is felt by the part of US industry that is rail dependent every day.

A few examples will suffice. Over the course of this past year, across the big four railroads, trains holding for crews—and in many cases holding for power—reached record levels compared to recent years. How does a train not moving because the railroad doesn't employ enough people to drive it differ from a train not moving because the workers are locked out or on strike?

More disturbingly, the number of embargoes has skyrocketed in recent years. It used to be that railroads implemented embargoes because of unforeseen natural disasters—bridge washouts, forest fires, polar vortexes. But no more. For some Class I's, embargoes now are being used as a routine part of their operating plans. Look at what's happened in the last five years as crews have been let go.

In 2017, there were a total of 140 embargoes among all 7 Class Is. In 2019, the number leaped to 631, an increase of just over 350%. And in 2022, year to date, there have been an astonishing 1,115 embargoes thru September—with 3 months to go. And the vast percentage of these embargoes—over 80%—are the result of what the railroads call “congestion,” a railroad euphemism for “we don’t have enough crews to move our trains and keep our network fluid.”

To be fair to the other Class Is, 886 of those embargoes are on the UP and 104 are on the BN, with almost all attributed to “congestion.” What is going on here? In 2017, UP had a mere five embargoes attributable to congestion. This year they have had 868 congestion embargoes. That is an astounding increase of over 17,000%. BN went from seven congestion embargoes in 2017 to 90 in 2022, an almost as astounding increase of nearly 1,200%.

And these embargoes are not just metrics reported to the STB. Each embargo means the railroad has—-almost always with virtually no notice—told the customer that it will not serve that customer for a period of days, often a week or more. We are talking about major U.S. industries—grain, fertilizer, chemicals, livestock, soda ash and others. Industries which cannot function without regular and most importantly reliable rail service. How can we expect these businesses to function? They can’t plan. They can’t serve their customers. The persistent use of embargoes to manage the fluidity of a railroad’s network as a regular operating strategy appears to me to fundamentally implicates the common carrier doctrine. As a result, we see a downward spiral in productivity across the economy.

In the spring, UP told the largest fertilizer company in the country to cut shipments by 20% or face embargo—in the heart of the planting season. Fortunately, that issue was resolved. In June, after months of frustratingly unreliable service from UP, Foster Farms in California was on the edge of euthanizing millions of chickens because UP couldn’t deliver feed trains. As a result, we issued the first emergency service order in more than 10 years.

Last summer we received reports from the ethanol industry that companies had completely stopped production at various plants on 39 separate days during the first half of this year because the railroads could not deliver trains of empties so that the ethanol producers could unload their full tanks. Did the decrease in Ethanol production contribute to the shortage of gasoline and the giant jumps in gas prices? No doubt that it did. And in the last two years, based on data we saw yesterday, the movement of even long-haul intermodal containers more than 500 miles has grown 20% more on truck than on rail.

There are endless other examples of damage to the economy I could provide, but you get the point. So, if the AAR tells us that a complete work stoppage would cost the economy $2 billion per day, how much has our country lost from the railroads’ choice to implement a 10% work stoppage in just the last 2 ½ years?

If one simply examines the trend lines of railroad output and then examines the actual output in the last 2½ years, the drop off is vivid. In 2021 and 2022, railroad output is far below where a reasonable trend line would put them, 12.9% below the trend-line in 2021 and an astonishing 15% below the trend-line this year.

Just pro-rating the AAR’s assumptions about the cost of a shutdown, that means our economy is losing roughly $300 million a day in economic activity resulting from the on-going service crisis. That amounts to losses this year of an astonishing $109 billion dollars, to go with similar service-related losses in 2021 of roughly $88 billion dollars. All told these last two years, that's $197 billion dollars in economic losses. Accepting that these calculations are only rough approximations—suppose, to be conservative, they are off by ½ and the loss to the economy was only $100 billion, the harm to our country is extraordinarily painful.

What, if anything, are the railroads doing about this? At this conference, we're being told that high-level executives throughout the Class Is have gotten the message and are talking about the need for growth. I've learned since joining the STB what I'm sure many of you in this room have known for some time and that is to take what I hear from the railroads with a little more than a grain of salt—perhaps a 270,000 lb. carload of salt.

Last year at this conference, all we heard from the railroads was iteration and reiteration that it was time for a "pivot to growth." Since that time, has there been any growth? Clearly the answer is not only no growth but a continuing drastic decline in service

One colleague suggested to me that coming to this year's conference I should wear a t-shirt that says, "I came to Rail Trends, where they promised me a pivot to growth and all I got was this crummy t-shirt and a service crisis." As you can see, I left the t-shirt at home.

And it was not as though after last year's conference the railroads were actually ready to move ahead to solve the worker shortage crisis on their own. Instead, over the next few months, rail service declined so disastrously that the Board initiated our urgent service hearings last April.

If you look at the employment numbers, you will see that no real discernible change started until after we issued our order in May requiring each of the big four railroads to provide us with service recovery plans and begin reporting regularly on their progress, especially regarding hiring and training efforts.

As a result, the four big railroads promised to increase their hiring, while complaining bitterly that hiring is hard in this atmosphere, and to greatly augment their training classes. But remember, railroads are operated by highly-skilled employees who require substantial training, ideally for many months. And even after graduating from training, it takes new employees a long time to operate with the safety and efficiency of the long-established workers who had been let go by the thousands over the previous years. In any event, it was only after the Board's intervention that the carriers kicked their hiring and training programs into higher gear.

Of most significance in terms of digging out of the service hole, I focus on train and engine employees—-the people who actually drive trains. Between April and September of this year, the four big railroads have added only 420 total T&E employees who are counted as being in "active service." That is an increase of less than 1 percent (.97%). Obviously, it was a lot faster to let go of thousands of workers in four months than it has been to hire and train new ones. This is why so many industries did not let their workers go when the pandemic began, a concept that should have been known and implemented by the highly paid railroad CEOs.

What did those short-sighted COVID furloughs actually save the carriers? While costing the U.S. economy possibly hundreds of billions of dollars, the Class Is, over the last two-and-a-half years, saved roughly $4.8 billion in payroll. But could they have afforded to keep those 13,000 workers on the payroll so they could support our economy as it quickly began to recover?

During the same last two-and-a-half years, the Class Is have returned nearly $60 billion to shareholders in stock buy backs and dividends, more than 12 times what they saved in payroll.

Might the shareholders have been satisfied with only $55 billion? Apparently not. The $4.8 billion in saved payroll would have been a drop in the bucket, but the Operating Ratio had to be met!

Today, the railroads tell us they are still having a hard time recruiting, retaining, and recalling workers. The carriers try to blame this all on the Great Resignation. But that's not what we hear from others. The fact is that railroad personnel practices have made these jobs much less desirable. Let's face it. Given the fact that for a railroad employee, nearly 1/3 of their co-workers have been let go in the past few years, the working conditions have deteriorated. The railroads trying to move the same amount of freight with far fewer workers, and now trying to climb out their service hole, have caused managers to drive the remaining workers harder to make up for that loss. No wonder quality of life has become the biggest hurdle for the Class Is to hire and retain workers.

We frequently hear that railroads and other observers are measuring progress of digging out of the current crisis by telling us how long it will take them to get back to pre-pandemic levels of service and output. But why should that be the goal? That is simply a return to mediocrity and rail service that continues to be a damper on the economy and is completely unacceptable.

Let's examine briefly the landscape in the years prior to the pandemic. After Staggers, productivity and volumes **grew**; rates **declined**. Yes, deregulation worked – in 1980. But look at that data starting in 2005, and you see a very different story. All the benefits from deregulation were achieved in the quarter-century between 1980 and 2005. The only thing that has grown since 2005 is what railroads charge their customers. From 1980 to 2005 rates fell every year like clockwork. But since 2005, rates charged to customers in inflation-adjusted terms have risen by nearly 30%.

But at the same time, the railroads changed dramatically and stopped the fairly steady growth in rail freight which had followed Staggers. Total amount of freight on the Class I's either dropped or stagnated. So, for example, on CSX between 2004 and 2019, gross ton miles dropped from 509 million to 417 million—almost 20%. UP dropped from 1.1 billion to 919 million—also about 20%.

You might say, well, some of that was due to coal dropping off. True enough. Although I think we've heard enough from the railroads trying to excuse their lack of growth on the decline in coal. It's not as though the reduction in the use of coal has been a surprise. Everyone has known for years that was going to happen.

In most businesses, if customers stop buying one product, an effort is made to find other products to replace what is being lost. If people stopped buying hamburgers, wouldn't McDonald's at least try to sell more chicken and fish sandwiches to make up the difference? But as we can see, for the railroads, even setting coal aside, it is 16 years and counting and there has been no growth to speak of.

Looking at total freight carried by all Class Is, excluding coal, 2006 was the high-water mark, when total tonnage was just under 1.4 trillion and adjusted carloads were 18 million. The railroads have yet to exceed those amounts.

What did the railroads shareholders achieve by these classic behaviors of monopolists, cutting service and workers, and raising prices? A lot. Measuring only the last 12 years since 2010 in nominal dollars, the Class Is have been able to return $224 billion to their owners in dividends, cash distributions (in the case of BN), and stock buybacks.

I have nothing against business owners getting rich—after all, that's the American way. But because the railroads are imbued with a statutory requirement to serve the public interest, it is essential that in realizing their handsome profits, they do so by enhancing the nation's economy and not detracting from it, goals established at this conference, by smarter people than me, as not being mutually exclusive.

The stagnation among Class Is in growth is even more astounding when you consider the growth in Gross Domestic Product during the last 16 years. It's not as though there weren't the equivalent of more chicken and fish sandwiches for the railroads to pursue. The Department of Commerce provides figures that unpack the various components of the GDP. Considering all the kinds of stuff that comprise the GDP that could potentially be handled by railroads, such as consumption of goods and equipment, structures, and residences; import goods and export goods. This stuff in the American economy, since 2006, has grown ***by more than 45%*** because it includes import goods which are subtracted from the calculation of total GDP. But those imports are quite real, and of course can be moved by railroads. This increase of 45% is equal to an annual growth rate of 2.4%. Significantly, railroads had actually achieved growth rates in that neighborhood in the years between 1990 and 2006. So, if the railroads had continued growing at the rate of 2.4% since 2006, they would have just kept their share of the transportation market steady.

What would that world look like? And, again, I will set coal volumes aside. In 2006, the railroads handled a little more than 18 million non-coal carloads. Had those non-coal volumes grown at the 2.4% rate, that would be roughly 8.1 million more carloads in 2022. Since each carload replaces roughly four truck movements, that's 32.4 million loads that could now have been removed from the highways on an annual basis. The numbers show that truck volumes would be roughly seven percent less—with all the associated savings in fuel, highway maintenance, congestion. And as the AAR rightly tells us, there would have been millions of fewer tons of CO_2 in the atmosphere.

Instead, today, railroads are actually carrying a smaller percentage of all freight than they were in 2006. And it is worth underscoring that while American railroads have not grown during that time, their Canadian counterparts have grown significantly.

But all of this benefit to the economy has been lost because the railroads chose to re-trench, cutting nearly 1/3 of their workforce primarily in attempts—mostly successful—to sink their OR.

What did the lack of growth cost the economy looking at the years before the pandemic? Given the efficiency and more cost-effective movement on rail, it's reasonable to conclude that the total growth in the economy would have exceeded 45% had railroads grabbed their share. Certainly, the cost of transporting by truck is higher—in expense, in fuel, in carbon footprint, in congestion, highway maintenance, etc., etc., etc. The opportunity cost to our economy was likely substantial but hard to quantify.

The railroads cannot have it both ways. They cannot tell us, as the AAR did this past September, how crucial the railroad industry is to the US economy and then deny that the railroads failure to pick up even their fair share of the growth in freight and live up to their potential has resulted in a loss to that economy. Therefore, I am unwilling to merely strive for a return to what was clearly an inadequate level of rail output we experienced in the past 16 years.

Compared to 1980, we face new and different problems as a society. We have new and different problems in the railroad industry. And we require new and different approaches to those problems. It does not mean that prudential actions on the part of the Board, actions that are within our delegated powers, imply a return of heavy-handed regulation.

But in order to obviate the need for further action by the Board, it is essential that the railroads change their business strategies going forward, so that they not only dig out of the current hole as fast as possible, but equally importantly, return to a path of robust growth and commit to never again take the short-sighted approach of stripping themselves of essential resources.

And what would it take to grow that traffic base? Frankly, yesterday's speakers—particularly Adrienne Bailey and Rick Paterson—pointed the way. We need a real pivot to growth to succeed. We need the railroads to innovate and imagine, to think of selling service, not costs; to work creatively with their supply chain partners, not simply to act as a toll booth.

And yet I have heard, and I know all of you have heard, that there is a very real concern that the railroads will have learned nothing from the tremendous and rapid reduction in work force when the pandemic began. Instead, the concern is that, in the event of a recession, a possibility which I think is inevitable, the railroads will again take the opportunity to cut their work force as they did before.

Given all the struggles to rebuild the workforce in the past year—struggles which have hardly been overcome—that would be a major mistake. Instead, if there is a falloff in rail traffic because of a recession, the national interest would dictate that the railroads use the opportunity of temporarily unneeded resources to actually pivot to growth, to search out and appeal to new business for their railroads—businesses that should have been using rail or increasing their use of rail all along—so that when the supposed recession recedes, the railroads will emerge bigger and stronger. That would be best for all of us.

Thank you very much.