



Surface Transportation Board
Washington, D.C. 20423-0001

July 22, 2021

Mrs. Katie Farmer
President and Chief Executive Officer
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131

Dear Mrs. Farmer,

I am writing to express my concerns about significant disruptions within the aspects of the international intermodal supply chain that involve the Class I freight rail network. I am particularly concerned about significant increases in container congestion at key U.S. terminals, and substantial charges being levied by the railroads for container storage at these terminals.

Specifically, in recent months, the Board has received numerous reports related to the length of time that containers are being held in rail yards, and the sizeable storage fees (“demurrage”) some customers have been required to pay in order to obtain release of containers bearing their shipments. These reports have come from shippers, both large and small, in addition to third-party logistics providers. I am particularly troubled about reports that Class I railroads are continuing to impose these charges even in circumstances when the receivers, as a practical matter, have no means to facilitate the release of their containers. Under these circumstances, demurrage fails to provide any constructive incentives, and perversely results in massive charges that can exceed the commercial value of the shipment.

In order to better understand the magnitude of the current container congestion and the framework for the associated demurrage fees, I am seeking information from each of the Class I railroads regarding policies and practices with respect to the assessment of demurrage fees on intermodal containers.

At your earliest opportunity, please provide the following specific detailed information for your top ten intermodal terminals in the United States by volume: (1) the number of “free days” allowed for container storage before demurrage fees begin to accrue; (2) the daily fee schedule after any free days expire; (3) any increase or decrease in such demurrage fees and free time since January 2021; (4) any fee “caps” that are currently in place and how long those caps are expected to remain in place; (5) whether receivers are being permitted to provide their own chassis to retrieve their containers; (6) a description of efforts made, if any, to reduce storage charges where delay is not within the control of the shipper or receiver; and (7) the average daily

volume of stored containers, broken out by month from July 2020 to the most recent month for which data is available. Of particular importance, please describe your policies and practices of assessing storage charges, including the circumstances under which relief can be granted or charges can be excused, and whether charges are imposed even when the receiver is powerless to avoid a delay in retrieving a container.

The reports described above suggest that railroad billing practices for container storage charges are markedly out of step with prevailing Board policy on the imposition of demurrage charges. Policy Statement on Demurrage & Accessorial Rules & Charges, EP 757, slip op. at 21 (STB served Apr. 30, 2020) (“charges generally should not be assessed in circumstances beyond the shipper’s or receiver’s reasonable control”). Given the magnitude and duration of congestion issues, many shippers have questioned whether the Board should lift the COFC/TOFC exemption for the limited purpose of subjecting container storage charges to Board demurrage policy and rules applicable to non-exempt rail traffic.

It is important to underscore that, at this time, the Board has not initiated any actions with respect to the existing intermodal exemption. Because I recognize the significance of any such potential Board action, I am requesting the above information to facilitate careful consideration of this difficult situation and to assist the Board in determining whether any action may be warranted. Right now, the Board’s principal concerns are helping to mitigate the congestion problems at intermodal yards caused by the unprecedented economic situation, improve network fluidity, and provide relief to shippers and receivers who are not in a position to reasonably avoid onerous and potentially business-threatening storage charges.

I would appreciate your prompt attention to supplying the requested information, and any other information you believe would be helpful in understanding these circumstances. Thank you in advance for your cooperation during this challenging time. If you or your staff have any questions, please contact me or Mr. Michael Higgins, Acting Director of the Board’s Office of Public Assistance, Governmental Affairs, and Compliance, at 202-245-0238.

Sincerely,



Martin J. Oberman
Chairman

cc: Honorable Pete Buttigieg, Secretary, U.S. Department of Transportation
Honorable Daniel B. Maffei, Chairman, Federal Maritime Commission
Mr. Amit Bose, Deputy Administrator, Federal Railroad Administration
Honorable Senator Maria Cantwell, Chair, Senate Committee on Commerce, Science and Transportation
Honorable Representative Peter A. DeFazio, Chair, House Committee on Transportation and Infrastructure