



June 18, 2010

Rail Freight service Review Secretariat
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Ottawa, Ontario
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By Email: RFSR-ESMF@tc.gc.ca

RE: FOLLOW UP FROM MEETING WITH PANEL

Dear Sirs,

Further to our meeting in Montreal on May 19th, we felt it appropriate to follow-up with further comments which are designed to help the Panel better understand our principals' dilemma with respect to rail service, respond to some of the points raised in the submissions made by both the railways, and suggest practical means of implementing the changes recommended in our submission dated April 30, 2010.

In their submissions to the Review Panel, both CN and CP note that vessels arriving at Canada's busiest container port are often late – some by more than 8 hours. Although ocean carriers strive to meet their schedules (which is in their best interest), it is the nature of ocean carriage to deal with imponderables such as unexpected weather events over great distances, occasional congestion problems at both Canadian and overseas ports, and a myriad of other possible occurrences. Given the foregoing, it is essential that some flexibility be built into the system to reflect the realities of the international intermodal market segment that the railways serve.

Both CN and CP strive to operate on a balanced basis. In other words, if a shipping company brings one-thousand containers to Toronto via Port Metro Vancouver, the railways expect one-thousand containers to be sent from Toronto to Vancouver. Unfortunately, the business of international trade does not work this way, and there will always be an overall imbalance of trade. For example, import containers from Asia to Eastern Canada via Vancouver outnumbered export containers from Eastern Canada to Asia for several years between 2003 and 2008. This being said, it is easy to see how containers can pile up in Vancouver if the railways are operating on a system that is disconnected from the manner in which Canada's international trade actually flows.

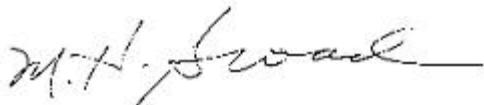
The railways' ability to operate under a different system than that of their customers and to impose processes that are contrary to their customers' best interests, is testament to the power that Canada's two major railways hold over the marketplace. Indeed, it is interesting to note that both CN and CP Rail refer to shipping companies as "other participants" in the supply chain rather than the customers that they actually are.

The crux of the matter lies with the "Levels of Service" issue and the confidential contracts provided for in the *Canada Transportation Act*. The railways contend that confidential contracts are used extensively and clearly lay out the responsibilities and commitments of the railway and their customers. Although this may be true in theory, in practice, Canada's railways are not interested in providing level of service commitments in their confidential contracts. Despite references to service standards in some confidential contracts, the railways will only commit to such standards on a "best effort" basis.

Unfortunately, the level of service standards contained in the *Canada Transportation Act* do not apply when confidential contracts are in place. For this reason, we attach our suggested amendments to the Act, which would satisfy our members' requirements without extensive changes and without adding any great oversight or administrative burden on the Canadian Transportation Agency.

We trust this provides the Panel with a more focused view of the recommendations contained in our original submission, as well as a concrete framework for their implementation.

Yours truly,



Michael Broad
President

PROPOSED AMENDMENTS TO THE ACT

Level of Services

Accommodation for traffic

- 113.** (1) A railway company shall, according to its powers, in respect of a railway owned or operated by it,
- (a) furnish, at the point of origin, at the point of junction of the railway with another railway, and at all points of stopping established for that purpose, adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage on the railway;
 - (b) furnish adequate and suitable accommodation for the carriage, unloading and delivering of the traffic;
 - (c) without delay, and with due care and diligence, receive, carry and deliver the traffic;
 - (d) furnish and use all proper appliances, accommodation and means necessary for receiving, loading, carrying, unloading and delivering the traffic; and
 - (e) furnish any other service incidental to transportation that is customary or usual in connection with the business of a railway company.

Carriage on payment of rates

- (2) Traffic must be taken, carried to and from, and delivered at the points referred to in paragraph (1)(a) on the payment of the lawfully payable rate.

Compensation for provision of rolling stock

- (3) Where a shipper provides rolling stock for the carriage by the railway company of the shipper's traffic, the company shall, at the request of the shipper, establish specific reasonable compensation to the shipper in a tariff for the provision of the rolling stock.

Confidential contract between company and shipper

- (4) A shipper and a railway company may, by means of a confidential contract or other written agreement, agree on the manner in which the obligations under this section are to be fulfilled by the company.

(4.1) Such contracts define agreed service standards, including measures for performance and for recovery with respect to disruption, communication/data exchange, default provisions or compensation measures, and commercial dispute resolution.

(4.2) When a railway refuses to negotiate a confidential contract with a shipper, or when the parties are not able to reach an agreement, either party can file with the Agency (with copy to the other party) a Notice of Failure to Agree on a Confidential Contract. This notice is not a public document and is kept by the Agency for monitoring purposes. A summary of such monitoring is included in the Agency's annual report provided under section 42 of the Act.

Service agreements with ports and terminals

115.1. (1) Railways, terminals and ports operating in the same area can enter into a service agreement which defines the operational responsibilities of each party and the related performance indicators , as well as accountability provisions, forecasting processes, review processes, and commercial dispute resolution processes.

(2) When a railway, a port or a terminal refuses to negotiate a service agreement with the other party(ies), or when the parties are not able to reach an agreement, either party can file with the Agency (with copy to the other parties) a Notice of Failure to Agree on a Service Agreement. This notice is not a public document and is kept by the Agency for monitoring purposes. A summary of such monitoring is included in the Agency's annual report provided under section 42 of the Act.