STEPS TOWARD IMPROVING FREIGHT CAR UTILIZATION

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It is common knowledge that there has been a steady and continuous decline in the overall ownership of freight cars. As a consequence, there is a need for a renewed effort to improve the utilization of the existing freight car fleets. That endeavor is necessary even though there may be isolated or sporadic periods in which the freight car supply appears to be adequate and there are limited reports of car shortages. In that respect, maximum utilization of the car supply should be viewed as a constant responsibility of the several interested groups, including the carriers, the shippers, and the Commission. The following commentary will review the several actions taken by the Commission to improve freight car utilization, the corresponding responsibilities of the carriers and shippers, and the importance of tariff observation in obtaining that goal.

In light of the difficulties experienced or presently being experienced by grain shippers, among others, with regard to freight car shortages, the importance of maximum efficient freight car utilization is apparent today to every knowledgeable individual whether he be a shipper, carrier, consumer, or regulator. Until recently, there had been no similar car shortage problems affecting shippers of lumber and related commodities. But the problems actually experienced by other shippers should serve as a useful benchmark for all persons. It has been said many times and in many variations that experience is the best teacher. But such personal experience may be a costly, time-consuming method of securing an education. Bearing these concepts in mind, lumber shippers and others have an opportunity to review their shipping needs, shipping practices, and steps which may be necessary to meet the challenging demands of the future. The term *"steps"* in improving freight car utilization is specifically underlined because it is clear that no one approach—whether it be legislative, judicial, administrative or proprietary—can assure a realistic solution of the chronic freight car shortage problem. This problem has existed for a number of years and, in fact, the first proceeding before the Commission in 1887 related to car shortages in the then Dakota Territory.[1]

At the outset, it would be useful to outline in broad general terms the perimeter of the chronic freight car shortage problem and methods to solve that problem. This problem can only be successfully solved if it is

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1. *Holbrook v. St. Paul, M. & M. R. Co.*, 1 I.C.C. 102.

clearly understood that there is a need for an adequate overall freight car supply, maximum efficient utilization of the existing fleet and complete cooperation among the many interested individuals. It must be emphasized that the railroads cannot be expected to maintain a car fleet to meet every possible contingency. But they should have a car fleet which, in conjunction with maximum efficient utilization, would enable them to meet reasonable demands for service. A review of the car ownership of class I railroads pinpoints the major cause for the present dilemma.

In 1957, class I railroads owned a total of 1,810,022 cars of various types, including 680,597 plain boxcars, 51,476 equipped boxcars, 50,156 covered hoppers, and 50,183 flatcars. By 1972, the total ownership which had declined to 1,455,058 cars, included 345,718 plain boxcars, 176,473 equipped boxcars, 139,109 covered hoppers, and 95,358 flatcars.[2] As of January 1, 1974, the total ownership had declined to 1,395,105, including 326,484 plain boxcars, 175,323 equipped boxcars, 150,499 covered hoppers, and 99,002 flatcars. Despite the noticeable increases in equipped boxcars, covered hoppers and flatcars, the sharp decline in the number of plain boxcars, frequently called the "workhorse" of the railroads, is a significant factor in the present car shortage problem. Over the past several years the Commission has repeatedly called attention to the steady decline in the overall car ownership of the railroads, especially in plain boxcars, in an effort to alert the industry to the ever present danger of severe car shortages. For example, in Ex Parte No. 241,[3] the Commission, in concluding that there was an overall inadequate car supply, endorsed a railroad-sponsored car ownership formula designed to allow each railroad to determine the number of cars which it should own to meet the demands of its various shippers. The Commission has attempted to assist the railroads in augmenting their car fleets by also imposing an incentive element in addition to the basic for-hire charge assessed by the car owner for its use.[4] The incentive per diem charges now apply year around and not for a specific period. The extra charges assessed during that period must be earmarked for the purchase, building, or rebuilding of plain boxcars. While this program is of relatively recent origin and has been subject to some criticism, it has contributed to the acquisition of additional plain boxcars. The Commission, in adopting the incentive per diem rules, was cognizant that as it gained experience under the new

2. Interstate Commerce Commission, "86th Annual Report to Congress", 1972, page 114.

3. *Investigation of Adequacy of Freight Car Ownership*, 323 I.C.C. 48, 335 I.C.C. 264, 335 I.C.C. 874, 341 I.C.C. 64.

4. *Incentive Per Diem Charges - 1968*, 337 I.C.C 183, 337 I.C.C. 217, 339 I.C.C. 627.

program a modification or expansion of the rules and charges might well be required.

In summary, the several approaches taken by the Commission to facilitate an increase in the overall freight car supply, namely, a car ownership formula and incentive per diem charges, are essentially long range steps which should provide a means to alleviate the chronic freight car shortage problem. In addition, the Commission has supported legislation which would assist the railroads in acquiring freight cars in those circumstances where their financial resources are severely strained. In the interim, however, there must be a renewed emphasis on maximum efficient utilization of the existing car supply.

While improvements in freight car utilization are an ongoing requirement, they assume major importance during times of acute car shortages. Drastic techniques may be utilized by the carriers and the Commission to provide an equitable distribution of the available car supply, to prevent unnecessary delays in the movement of cars, and to attach penalties, where necessary, to further maximum efficient utilization of the available car supply. These actions although primarily directed toward the carriers may directly or indirectly affect the shipper.

Before commenting on the several recent actions of the Commission during the present car shortages affecting the grain shipper, it would be appropriate to recall some prior steps which have a direct or important bearing on car service. Car service is defined as "the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property * * *."[5] The carriers have had elaborate rules governing car service for more than 50 years. However, these rules were honored more often in the breach than in the observance. Two of the many important rules, Car Service Rules 1 and 2, pertain to the movement of foreign cars, that is, those on the lines of the nonowner, back to the railroad owner. These two rules normally permit loading of the empty cars. The latter rules are of particular importance to the railroad car owner during times of car shortages since that carrier must be able to meet reasonable demands for service from shippers located on its lines. After lengthy hearings, the Commission in 1970 in Ex Parte No. 241 ordered the carriers to observe seven of their car service rules, including Car Service Rules 1 and 2, in their normal day-to-day operations. While strict observance of Car Service Rules 1 and 2 might result in operational difficulties for some carriers, it was felt that carriers with an inadequate car ownership should bear the responsibility during periods of shortages. The Commission's decision

5. Section 1(10) of the Interstate Commerce Act.

was recently affirmed by the Supreme Court.[6] The prescribed car service rules are now effective except to the extent that service orders may modify their application. Car Service Rules 1 and 2 have made a distinct contribution to better utilization of the available freight car supply during the present car shortages and a number of carriers although expressing some initial opposition to the prescription are now of a different opinion. Interestingly, some carriers have recently requested the Association of American Railroads (AAR) to issue directives on their behalf requiring the return of the cars empty to the owner when there is no load available.

Additionally, the above-mentioned incentive per diem program although frequently considered solely as a means to augment the boxcar fleet actually assists in better utilization of the existing fleet as envisioned by the amendment of Section 1(14)(a) of the Act.

Turning next to the present car shortage problem affecting principally grain shippers, it would be appropriate to briefly sketch each of the series of steps taken by the Commission to provide relief. For over a year prior to last summer, there had been few reports of substantial car shortage primarily because of two factors: a downturn in the economy which resulted in a decrease in demand for rail equipment and a number of labor disputes which also affected that demand. Late last summer, with the news of the huge sale of grain to the Soviet Union, the change in the *status quo* was dramatic. Shortages began to be reported immediately and intensified as the days went by. For example, in early August the reported average daily shortages of boxcars and covered hoppers were 910 and 767 cars, respectively. A month later, the respective shortages were 2,672 and 1,765 for the same cars. By early January, the average daily reported shortages for plain boxcars and covered hoppers were 8,543 and 10,122 cars, respectively. The Commission's staff in analyzing the situation quickly grasped the need for extraordinary action to stem the mounting tide of boxcar and covered hopper shortages. Acting under its emergency powers,[7] the Commission issued Service Order No. 1112 on October 3, 1972. This service order, in general, requires the railroads to expedite the handling of all traffic by the placement, removal, and/or forwarding the cars within a 24-hour period, to make light repairs within the same period and to assess a storage charge on cars assigned to a specified shipper. Light repairs will be discussed again in more detail. The Commission's action was not greeted with unanimous approval. There were some officials of the larger railroads who felt that the service order was untimely and would encourage diversion of much needed rail traffic to other modes. But a review of the subsequent car supply problems can

6. *United States* v. *Allegheny-Ludlum Steel,* 406 U.S. 742.

7. Section 1(15) of the Interstate Commerce Act and other provisions thereof.

only attest to the wisdom of the Commission's action. It was timely! It was within its statutory duties! It was, in the last analysis, in the best interests of the public! The service order was subsequently modified on two occasions. The first amendment allows a railroad experiencing hardships or inequities to apply to the Commission through the AAR for relief. A subsequent amendment prohibits a railroad from removing from the point of unloading cars allegedly empty but containing various debris. That aspect will be discussed in more detail later on.

These initial emergency steps to facilitate maximum efficient utilization of the available car supply were followed by Service Order No. 1117 issued early this year, which permits the substitution of open-top hoppers in lieu of covered hoppers for the movement of grain or soybeans where the carrier and shipper agree. The service order specifies that the minimum weight per shipment of the named commodities shall be the same as that required in the covered hoppers regardless of the number of open cars needed to secure the minimum weight. The extent of the use of the open-top equipment may, of course, depend upon many variables, including the weather and the cooperative efforts of the carriers and shippers.

Early this month, the Commission took two further emergency steps. On the same day, it issued Service Orders Nos. 1120 and 1121. A similar order was issued increasing demurrage charges on domestic traffic. Service Order No. 1124 required two credits to offset one debit and reduced the number of debits that could be accrued in an average agreement account from four to two. It also added an increment of $50 a day on detention beyond the sixth chargeable day. With the alleviation of shortages, particularly boxcars and covered hoppers, Service Orders Nos. 1112 and 1124 were modified to eliminate types of cars not now short, and Service Order No. 1117 was vacated.

In its efforts to further improve car utilization, the Commission issued Service Order No. 1134, placing a drastic penalty on cars loaded with lumber and held at hold points for furtherance beyond five days. This order, however, was contested by a few lumber processors and the District Court in Oregon suspended the order. An appeal has been filed with The Supreme Court of the United States by the Commission.

Service Order 1120 places restrictions on the number of covered hopper cars which may be used in unit-grain train service. Unit-grain trains are defined as trains of 50 or more covered hoppers originating and operating as a unit from a single point of origin to one destination in accordance with the governing tariff provisions. The use of jumbo covered hoppers, defined as having a weight-carrying capacity of 180,000 pounds or more, will be subject to greater control. The primary purpose of this service order is to promote a more equitable distribution of the covered hoppers and to make more cars available to the small shipper.

Service Order 1121 reduces the free time on plain boxcars and covered hoppers held for loading or unloading at ports to 72 hours and establishes the minimum rates to be assessed for the detention of freight in such cars at ocean, Great Lakes, or river ports requiring transfer between rail and water carriers. The reduced free time period will apply also on cars held short of the port because of any condition attributable to the shipper or consignee. The principal purpose of this service order is to expedite the loading and unloading of cars so as to achieve improved car utilization.

These several service orders which supplement each other are a graphic illustration of the Commission's determination to act quickly in the public interest to ameliorate the car shortage problem. If you will analyze each of the orders in detail, you cannot conclude otherwise than that they seek principally to improve car utilization, giving due consideration to the needs of the various shippers. The service orders do impose very severe conditions on the operations of the railroads. The Commission's field staff, although small in number, effectively polices the observance of those orders. Our Section of Railroads also maintains excellent relations with the Car Service Division of the AAR in resolving car service matters, especially those which would increase car utilization. The Commission during this period of car shortages has also established liaison with grain exporters and elevator operators at the major ports. Through these channels, the Commission is able to determine the availability of vessels to move the grain and the existence of substantial car accumulations at the ports. In the event of a substantial congestion at a port, an embargo may be placed against the port or elevator. Several such embargoes have been utilized recently with very beneficial results. In addition to monitoring the transportation of grain, the Commission is also maintaining a close scrutiny on the movement of lumber and the related car supply. An official of the Commission works in close cooperation with the President's Council of Economic Advisers on matters involving the movement of lumber. But the Commission's actions without the cooperation of the carriers and shippers would bear little fruit. What then, one might ask, are the responsibilities of the carriers and shippers with respect to freight car utilization?

The railroads under the Act have the duty to provide and furnish transportation upon reasonable request.[8] During this period of car shortages, the railroad obviously must attempt to secure maximum use of their car fleets in conformity with the law. They have, as noted, in some instances instructed the AAR to issue directives requiring the return of the car empty to the owner when there is no load available. These directives are more onerous than the now mandatory Car Service Rules 1 and

8. Section 1(4) of the Interstate Commerce Act.

2. The carriers have also authorized the AAR to impose penalties for the failure to follow directives issued by that organization. This effort by the industry to police itself is to be encouraged but the Commission will not hesitate to issue its own orders where the circumstances so require.

Earlier there was a reference to the provision in a service order which requires the completion of light repairs within 24 hours. The prompt return of bad-order cars to service can make a significant contribution to maximum utilization of the available car supply. Additionally, there have been reports that the railroads are repairing and upgrading as many cars as possible, with emphasis on those types of cars in greatest demand. While those efforts should be encouraged, it is somewhat disheartening to find through field checks that these reports are not entirely accurate. Some carriers, unfortunately, are too lax in maintaining their car fleet in good condition. It should be recognized, however, that several carriers are not financially able to maintain their fleet to the highest possible standards.

The carriers, of course, are expected to enforce their tariffs, to observe the mandatory car service rules to the extent not modified, and vigorously to comply with the outstanding car service orders, including the admonition against pulling a car allegedly empty but containing debris. Cars not completely unloaded by the consignee must generally remain on demurrage or detention status pending completion of the unloading. A carrier removing such cars loaded with debris can be prosecuted not only under the Elkins Act for violations of Rules 14 and 27 of the Uniform Freight Classification, but can subject itself also to penalties under the Interstate Commerce Act.

The shipper, including the lumber shipper, similarly has very important obligations in facilitating better car utilization, especially during this period of critical car shortages. The lumber industry is a major user of rail transportation services. For example, in 1971 the railroads in the United States originated slightly over 2 million carloads of lumber and wood products, except furniture, weighing over 104 million tons; in the Southern District for the same period, the carriers originated over 819,000 carloads of these commodities, weighing in excess of 48 million tons.[9] In 1972 railroads in the U.S. originated slightly over 2 million car loads of lumber and wood products, except furniture, weighing over 109 million tons; in the Southern District for the same period, the carriers originated over 865,000 carloads of these commodities, weighing in excess of 50 million tons. Shippers, including lumber shippers, are knowledgeable in

9. "Freight Commodity Statistics, Class I Railroads", Year Ended December 31, 1971, Interstate Commerce Commission, Bureau of Accounts, pages 5 and 21.

the transportation matters. They demand services commensurate with the charges for such services. For example, in many recent general revenue proceedings, shippers have complained that they were being assessed increases in rates despite a continuing deterioration in rail services. In Ex Parte No. 265,[10] the Commission in its report took special note of the service complaints of various shippers. Lumber shippers, including some from the South, cited and gave illustrations of such service deficiencies as inadequate car supply, excessive freight loss and damage, and excessive and erratic transit times. As the result of this evidence, the Commission ordered the railroads to file quarterly reports showing what corrective steps they have taken to eliminate the particular service deficiencies set out in the report of the Commission. Several such quarterly reports have been filed and are being reviewed. Additionally, the Commission has instituted a major investigation into railroad freight service in order to facilitate an appreciable improvement in service.[11]

The shipper, however, must do more than to complain. The shipper or receiver can best participate in improving car utilization by ordering cars at the appropriate time in sufficient numbers to meet its needs. The carrier should be advised of the destination so that it can furnish cars of the proper ownership in compliance with Car Service Rules 1 and 2. In fact, one of the car service rules prescribed by the Commission in Ex Parte No. 241, namely, Car Service Rule 15, specifies the type of information, if available, which the carrier should secure from the shipper. It would be to the advantage of each shipper to familiarize himself with this rule. After the empty cars have been made available, they should be loaded promptly and the carrier furnished shipping instructions immediately. Circuitous routings in order to prolong transit time should be avoided. The shipper or receiver should promptly unload the car at destination, remove all debris connected with the inbound load, and advise the carrier that the car is available. As previously mentioned, the consignee is generally under an obligation to completely unload carload freight including all dunnage, debris, and other foreign matter connected with the inbound shipment.[12] The consignee cannot expect the carrier to provide a free trash removal service. And it should be emphasized that the Commission will not countenance any attempts to circumvent the consignee's obligations in completely unloading carload shipments.

Undue detention of freight cars by shippers should, as a matter of good

10. *Increased Freight Rates, 1970 and 1971,* 339 I.C.C. 125.
11. *Investigation of Railroad Freight Service,* 341 I.C.C. 1.
12. *Consignees' Obligation to Unload,* 340 I.C.C. 405.

shipping practices, be avoided, especially during this critical period. Despite the sharp increases in demurrage charges authorized by the Commission in 1971,[13] it must be pointed out that the cars were purchased to earn freight by moving traffic, and not for storage purposes. You can rest assured that the Commission even during this critical period will closely scrutinize unwarranted detention of equipment. For example, about 2 years ago, a large midwestern carrier was assesed penalties of about $30,000 for violation of a service order. The carrier was actually unduly holding cars containing lumber rather than placing them on demurrage.

Finally, it is well established that the shipper, like the carrier, is presumed to know the provisions of the tariffs on file with the Commission. To lighten the load on the shipper, the Commission required the rail carriers in Ex Parte No. 265 to incorporate previously authorized general increases into the existing rate structure. With some prodding from the Commission, the carriers have responded and the tariff updating is on its way to completion.

In the coming month, we will undoubtedly see a continuation of the heavy export movement of grain. The new harvest beginning in a few months will further add to the critically low freight car supply. With an expanding economy, there will be increased carloadings of all commodities, including lumber. The news media, for example, has recently reported on the rising prices of lumber and the substantial exports to Japan. Additionally, there have been recent reports of a proposed sale of several hundred thousand bales of cotton to China. In these circumstances, there is a need for cooperation among many individuals, the shipper, carrier, regulator, and other interested persons. While the need for cooperation has been stressed on many occasions, it deserves a reemphasis in these critical times. Human nature, being as it is, reiteration of well-known concepts is vitally important. Without the complete cooperation of shippers and carriers, the Commission's tasks which are immense would become unmanageable. There is a need for a team effort to meet the present crisis and wholehearted cooperation in that direction is earnestly solicited.

13. *Demurrage Rules and Charges, Nationwide,* 339 I.C.C. 655, 340 I.C.C. 83.