

Precision Scheduled Railroading, Service Issues, and STB Options and Remedies

AAPA Legal Issues Seminar

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Topics

- Railroad Operations—paradigm shift to Precision Scheduled Railroading
- What the STB Can Do to Address Rail Service Problems
- Options for Restoring Rail Service and Recovering Financial Losses

Paradigm Shift to Precision Scheduled Railroading (PSR)

- Railroad Announcements:



March 2017



Sept. 2018



Oct. 2018



Jan. 2019

Paradigm Shift to Precision Scheduled Railroading (PSR)



PSR Key Principles

- Point-to-Point Shipment Scheduling
 - tighter train schedules
 - reduced interchange and handling
- Optimize asset utilization (e.g. cars, locomotives, yards)
- Cost controls (labor, equipment)

PSR Objectives

- **NS: to develop a “new operating plan that aims to produce better service at lower cost”**

PSR Objectives

- **UP: PSR “driv[es] improved service reliability for customers, increased operating efficiency and reduced network complexity”**

PSR Objectives

- **Increase Network Efficiency**
- **Improve Service Reliability**
- **Lower Operating Ratios**
- **Short-Term Financial Strategy \$\$**

PSR— Who Benefits?

- Stockholders and Wall Street
- Railroad management
- Railroad employees (?)
- Railroad customers (?)

CSX Implementation of PSR

- Closed yards
- Converted hump yards to flat yards
- Employee layoffs
- Idled locomotives and railcars
- Lack of notice and coordination with customers

CSX Implementation of PSR: Service Issues

- Increased transit times
- Decreased switching services
- Increased dwell time in yards
- Reduced car supply
- Inadequate customer assistance

CSX Implementation of PSR

- Aggressive roll-out that was painful and costly for customers
- Service has since improved and stabilized
- Dramatic improvement in **CSX operating ratio**
 - 2017: **67.9**
 - 2018: **60.3**

Rail Service Problems: What Can the STB Do?

What Can the STB Do?

- Informal mediation of service failures and complaints
- Issue Emergency or Temporary Service Orders to restore service
- Litigate complaints seeking recovery of financial losses

STB Informal Mediation

- **STB's Rail Customer and Public Assistance Office** can attempt to mediate disputes between railroads and their customers
 - STB lacks power to order a remedy or damages
 - becoming a “squeaky wheel” may result in priority service over other customers

What Can the STB Do?

- **Emergency Service Orders (ESO):** If STB determines that failure to move rail traffic exists, which creates an **emergency situation with substantial adverse effects on shippers or on rail service in a region** of the U.S., OR that a rail carrier cannot transport traffic in a manner that properly serves the public the STB may:
 - direct the handling, routing, and movement of traffic over that rail carrier or any other rail carrier
 - require joint or common use of rail facilities
 - prescribe temporary through routes
 - give directions for priority in transportation, embargoes, or movement of traffic under permits

Options for Restoring Rail Service

- STB has procedures for obtaining two forms of alternative service
- **Expedited Relief for Service Emergencies** (49 CFR Part 1146): Provides ability to obtain direct service from an alternative railroad
- **Temporary Relief for Service Inadequacies** (49 CFR Part 1147): Provides ability to obtain service via a different route that short-hauls the problem railroad and/or by-passes congested facilities

Options for Restoring Rail Service

- **Expedited Relief for Service Emergencies:** A shipper or railroad may petition STB for alternative rail service
 - must show a substantial, measurable deterioration or demonstrated inadequacy in rail service
 - requires discussions with incumbent RR re: service problems and why adequate service is unlikely to be timely restored
 - **requires commitment from 2nd railroad that it can safely provide alternative service without harming service to other customers**

Options for Restoring Rail Service

- Timeline for **Emergency Service Remedy**:
 - Shipper files Petition at STB
 - Railroad files Reply within **5** business days
 - Shipper files Rebuttal within **3** business days
 - No deadline for STB decision
- Reasonable to anticipate at least 2 weeks from filing petition to a decision

Options for Restoring Rail Service

- Duration of **Emergency Service Order**
 - At least 30 days, but may be extended up to 240 additional days if a transportation emergency continues to exist
- Railroad may file a petition to terminate alternative service
 - Must demonstrate that railroad can provide adequate service

Options for Restoring Rail Service

- **Temporary Relief for Service Inadequacies:** A shipper or railroad may petition STB for alternative rail service via a prescribed route, reciprocal switching, or terminal trackage rights
- Petition content requirements are the same as for emergency service

Options for Restoring Rail Service

- Timeline for **Temporary Service Remedy**
 - Shipper files Petition at STB
 - Railroad files Reply within **30** days
 - Shipper files Rebuttal within **15** days
 - No deadline for STB decision
- Reasonable to anticipate at least 2 months from filing petition to a decision

Options for Restoring Rail Service

- Duration of **Temporary Service Order** continues until incumbent railroad successfully petitions to terminate
 - railroad must demonstrate it is prepared to provide adequate service

Lessons From Past Service Crises

- STB extremely reluctant to dictate rail operations
 - Potential to make things worse
 - Directing service to one shipper will likely be at the expense of another
- STB prefers to require railroad reporting, monitor metrics, hold hearings, and encourage use of informal dispute resolution

Will New STB Members Take Different Approach?

- Chair Ann Begeman



- Vice-Chair Patrick Fuchs
 - Senate Commerce Committee Staff



- Board Member Martin Oberman
 - Chair, Metra Passenger RR (Chicago)



Options for Recovering Financial Losses

- **STB Complaints:** Customers whose transportation is governed by a [tariff](#) may file complaints at the STB requesting reparations for violations of the statute
- Service failures may violate:
 - RR **common carrier obligation** to provide rail service upon reasonable request
 - RR obligation to furnish an **adequate car supply**
 - RR obligation to establish **reasonable practices**

Options for Recovering Financial Losses

- **Common carrier obligation** clearly governs a rail carrier's unreasonable refusal to serve and *may* cover unreasonable reductions of service
 - “Reasonableness” requires a fact-specific inquiry
 - Reduced service for safety reasons has been found reasonable
 - Some precedent (pre-Staggers Act) suggests that rail service should be reasonably aligned with capacity to meet the reasonable needs of the shipping public

Options for Recovering Financial Losses

- Under the statute, a rail carrier shall furnish safe and **adequate car service** and establish and enforce **reasonable** car service rules and practices
 - No obligation to provide cars to meet peak or unpredictable demand
 - Carriers only required to maintain a fleet to meet avg. demand or to adhere to a normal supply of cars under normal conditions
 - STB must balance whether car supply order that benefits one customer would adversely impact another

Options for Recovering Financial Losses

- A rail carrier must establish **reasonable rules and practices** on matters related to its transportation or service
- **STB has broad discretion to conduct a case-by-case fact-specific inquiry** to determine the reasonableness of railroad practices and the factors are the most appropriate

Options for Recovering Financial Losses

- **Court Complaints:** Shippers with transportation **contracts** may file complaints in court for breaches of:
 - A negotiated service standard requires review and analysis of the contract's terms
 - If a specific service standard was not agreed upon, a railroad must provide transportation with “**reasonable dispatch**” per the railroad bill of lading contract

Options for Recovering Financial Losses

- **Breach of the reasonable dispatch standard** requires:
 - Determination of the reasonable dispatch period
 - A reasonable time for delivery depends upon the circumstances of each case
 - Determination of “reasonably foreseeable” damages

Options for Recovering Financial Losses

- **Court Complaints:** A breach of the railroad's **statutory common carrier obligation** may be litigated in court
 - but a court may refer the complaint to STB under primary jurisdiction
- Strategic consideration: Whether a court or the STB is a more favorable forum

Concluding Considerations

- PSR has been shown to benefit the railroads, jury is still out as to whether service reliability will substantially improve
- Impacted rail customers may pursue alternative service but such remedies are rarely granted
- To pursue STB remedy, confirm if service is governed by a contract or tariff
- If contemplating an ESO, must discuss alternative service with alternative carrier
- Consider use of STB mediation services, but success may be limited in a regional or national service crisis due to scope of problems and no. of impacted parties
- Consider pros and cons of STB vs. court forum for litigation of complaints to recover losses

Thank You!

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