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

AAPA Legal Issues Seminar

February 12, 2019
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:
  - CSX: March 2017
  - Union Pacific: Sept. 2018
  - Norfolk Southern: Oct. 2018
  - Kansas City Southern Lines: 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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