53084 SERVICE DATE – NOVEMBER 17, 2026
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36930

YOOKEL, INC. AND B&J GROUP, INC.—PETITION FOR DECLARATORY ORDER

Digest:[1] The Board issues a declaratory order finding that Yookel, Inc., and B & J Group, Inc., have not shown that demurrage was wrongly assessed by CSX Transportation, Inc., and Norfolk Southern Railway Company.

Decided: November 17, 2026

On May 14, 2026, Yookel, Inc. (Yookel), and B & J Group, Inc. (B&J) (collectively, Petitioners), filed a petition for a declaratory order from the Board addressing two questions arising from demurrage charges assessed by CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS). Specifically, Petitioners ask the Board to find that demurrage was wrongly assessed on B&J by CSXT and NS because B&J did not receive proper notice of the demurrage tariffs and because demurrage could not be assessed on private cars stored on private track. CSXT, NS, and their jointly owned subsidiary Consolidated Rail Corporation (Conrail) each filed replies to the petition on June 3, 2026. For the reasons explained below, the Board will issue a declaratory order but find that Petitioners have not shown that demurrage was wrongly assessed on B&J by CSXT and NS.

BACKGROUND

Keystone Trade Center (Keystone) is a rail-served industrial park in Morrisville, Pa., located at the site of a former Fairless Works facility. (Pet. 3-4.) Keystone is currently owned by NorthPoint Development (NorthPoint), which purchased the Fairless Works facility from U.S. Steel in 2020. (Id.) Yookel owns property located within Keystone. (Id. at 6.) Yookel acquired its property in 2007 from U.S. Steel pursuant to a Real Estate Agreement, which granted Yookel certain rail access rights on the common rail areas within Keystone. (Id.) B&J is a warehouseman,[2] Yookel's tenant at Keystone, and a receiver of rail cars. (Id. at 5-6.)

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] Warehousemen are third-party intermediaries that accept freight cars for loading and unloading but have no property interest in the freight being transported. See Demurrage Billing Requirements, EP 759, slip op. at 2 (STB served Apr. 30, 2020). By accepting the cars, however, warehousemen "can be in a position to facilitate or impede car supply." Id.

At the time the Fairless Works facility was constructed in the 1950s, the Pennsylvania Railroad (PRR) constructed a 2.7-mile line, known as the Fairless Spur, connecting the Fairless Works facility to PRR's Morrisville Yard. (Id.) Under the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (codified at 45 U.S.C. §§ 701-719), upon PRR's bankruptcy, Conrail acquired from PRR the rights to access Fairless Works over the Fairless Spur. (Id. at 3-4.)

Conrail serves Keystone pursuant to a Rail Operating Service Agreement that it entered into with U.S. Steel's predecessor in 2000. (Id. at 4, 6.) Under the agreement, Conrail has exclusive rights to use and operate a portion of a nearby serving yard, known as Fairless Yard. (Id. at 5.) When cars destined to be received by B&J arrive at Morrisville Yard, CSXT or NS (as the case may be) electronically notifies B&J that the cars are available for placement at B&J's facility. (Id.) To alleviate congestion at Morrisville Yard, Conrail automatically moves the cars over the Fairless Spur into Fairless Yard, where the cars remain until B&J orders them to be spotted on its siding. (Id. at 4-5.) Conrail serves multiple shippers and warehousemen within Keystone under this arrangement. (See id.)

CSXT and NS have each established tariffs that pertain to the accrual and assessment of demurrage charges. (Id. at 7 (describing CSXT tariff 8100 and NS tariff 6004-D).) In 2017, CSXT sued B&J in the U.S. District Court for the Eastern District of Pennsylvania to collect certain unpaid demurrage fees. There, B&J argued that CSXT had "no authority to charge B&J demurrage fees because CSX[T] itself does not own or lease the relevant railroad tracks, which are either owned by Conrail or owned by U.S. Steel and leased to Conrail." CSX Transp., Inc. v. B&J Grp., Inc., 381 F. Supp. 3d 438, 440 (E.D. Pa. 2019). The court held, however, that "CSX[T] is the 'serving rail carrier' required under the federal regulations to assess the charges" and, thus, so long as B&J had notice of the applicable tariffs, CSXT was entitled to collect the fees it had assessed. Id. at 441-42. Because CSXT established that B&J had notice, the court granted summary judgment for CSXT. Id. at 442-43. The demurrage framework at Keystone was also addressed in Yookel, Inc. v. U.S. Steel Corp., No. 22-655, 2023 WL 3033512 (2d Cir. Apr. 21, 2023) (summary order),[3] in which Yookel sought to recover from U.S. Steel the demurrage fees that CSXT had assessed against Yookel's lessee, alleging breach of the 2007 Real Estate Agreement and fraudulent inducement, among other claims. There, the court affirmed judgment on the pleadings against Yookel, reasoning in part that "demurrage fees are governed by federal laws and regulations to which Yookel had ready access." Id. at *3.

Here, B&J has been assessed demurrage charges pursuant to the CSXT tariff and NS tariff, respectively, for cars detained beyond the applicable free time at Fairless Yard. (Pet. 6-7.) Petitioners contend that the charges are not proper, (id. at 10-14), while CSXT and NS argue that the charges are proper, (CSXT Reply 7-8; NS Reply 9-11). Conrail states that it serves B&J as an agent of CSXT and NS, and therefore it "has no direct stake in this case." (Conrail Reply 2.)

[3] A copy of the slip opinion is attached to CSXT's reply as Exhibit B.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675 (1989). CSXT and NS argue that the Board should deny Petitioners' request for a declaratory order because the issues they raise were fully addressed in previous litigation, specifically CSXT v. B&J, 381 F. Supp. 3d at 441-443, and Yookel v. U.S. Steel, No. 22-655, 2023 WL 3033512, at *1-*3. (CSXT Reply 5-6 (arguing that issue and claim preclusion bar Petitioners' claims); NS Reply 3-5 (arguing that the issues raised by Petitioners have already been litigated and should not be reopened by the Board).)

Whether or not issue or claim preclusion applies in this case, the Board has no concerns with the Court's conclusion in CSXT v. B&J and, accordingly, will issue a declaratory order confirming that the demurrage charges at issue were properly assessed. The Board does so here to remove uncertainty regarding the application of its regulations at 49 C.F.R. part 1333 and its precedent related to demurrage charges for private cars on private track.

Demurrage Generally. Demurrage is a charge for detaining rail cars for loading or unloading beyond a specified amount of time called "free time." Demurrage Liability, EP 707, slip op. at 1-2 (STB served Apr. 11, 2014). Demurrage serves principally as an incentive to prevent undue car detention and thereby encourages the efficient use of rail cars in the rail network, while also compensating rail carriers for the expense incurred when cars are unduly detained. Pol'y Statement on Demurrage & Accessorial Rules & Charges, EP 757, slip op. at 1-2 (STB served Apr. 30, 2020). Indeed, demurrage serves as a means of incentivizing rail users to timely load and unload rail cars so that a carrier's track is not occupied for an excessive period of time. See R.R. Salvage & Restoration, Inc.—Pet. for Declaratory Ord.—Reasonableness of Demurrage Charges, NOR 42102 et al., slip op. at 4 (STB served July 20, 2010) ("[W]hen a shipper's privately owned rail cars are idled on the railroad's tracks, it is depriving the railroad of the use of that track."); see also Pol'y Statement, EP 757, slip op. at 9 (explaining that demurrage serves "to encourage the efficient use of rail assets (both equipment and track)"). The Board regulates demurrage under 49 U.S.C. § 10702, which requires railroads to establish reasonable rules and practices, and 49 U.S.C. § 10746, which requires railroads to establish demurrage rules and charges "in a way that fulfills the national needs" for freight-car use, distribution, and supply.

The Board's demurrage regulations provide that, in the absence of a contract, demurrage is governed by the demurrage tariff of the "serving carrier," 49 C.F.R. § 1333.2, as long as the carrier has provided actual notice of the tariff to the person (including a warehouseman) assessed the charges:

> Any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be held liable for demurrage if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the

placement of the rail cars. The notice required by this section shall be in written or electronic form.

49 C.F.R. § 1333.3(a).

Adequacy of Notice Under 49 C.F.R. § 1333.3. Petitioners ask the Board to find that B&J did not receive sufficient notice of the carriers' demurrage tariffs, as required by 49 C.F.R. § 1333.3. (Pet. 1.) According to Petitioners, Conrail must provide notice rather than CSXT and NS because Conrail is the "serving carrier" and a separate entity from CSXT and NS. (Id. at 8-10.) Petitioners also claim that Conrail is the entity "solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal[,] and accessorial freight charges" in the Rail Operating Service Agreement, (id. at 6, 10, 11). Petitioners argue that Conrail's operations in the subject area "have all the characteristics of a regulated rail line." (Id. at 9.) Petitioners claim that Conrail's role as the entity that physically delivers cars to B&J means that notice must come from Conrail. Therefore, according to Petitioners, the notices provided by CSXT and NS under 49 C.F.R. § 1333.3 are insufficient.

Petitioners further argue that even if the Board concludes that notice provided by CSXT and NS rather than Conrail satisfies 49 C.F.R. § 1333.3, the notices are still inadequate because they do not "make the warehousemen aware of the relationship with Conrail to provide them with sufficient information to understand the complex interplay between these different railroads." (Pet. 12.)

CSXT and NS each argue that Conrail acts as an agent of CSXT and NS when delivering cars to B&J and that because of that status, "notice provided by the principal . . . is notice from 'the carrier' within the meaning of [49 C.F.R.] § 1333.3." (CSXT Reply 6-7 (citing CSX Corp.—Control—Conrail Inc. (CSXT/NS-Conrail) 3 S.T.B. 196, 226, 228 (1998)); NS Reply 9-11.) NS also argues that Petitioners misquote and misconstrue the Rail Operating Service Agreement in support of their claims. (NS Reply 9-10.)

The Board agrees that because Conrail acts as CSXT's and NS's agent when delivering cars to B&J, CSXT and NS are the appropriate "carriers" to provide notice of the applicable demurrage tariffs in accordance with 49 C.F.R. § 1333.3. As the court in CSXT v. B&J correctly observed, Conrail is an agent of CSXT and NS within the Shared Asset Areas (SAAs), including the South Jersey/Philadelphia SAA (the Philadelphia SAA), within which Fairless Yard is located. 381 F. Supp. 3d at 441-42 & nn.26-27. Indeed, when the Board approved CSXT and NS's joint acquisition of control of Conrail in 1998 and established the SAAs, the Board specifically provided that CSXT and NS would each have "exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the SAAs," with Conrail acting as their agent. CSXT/NS-Conrail, 3 S.T.B. at 226, 228. Under this framework, Conrail

does not have authority to establish its own demurrage tariff or assess accessorial charges independently;[4] only CSXT and NS can.

The petition does not undermine this conclusion. Petitioners do not dispute that Conrail acts as the agent of CSXT and NS, (see Pet. 10 n.8, 12), or that CSXT and NS each sent B&J notices of their tariffs, (id. at 7). Petitioners instead argue that those notices are generic and make no mention of Conrail. (Pet. 7, 10.) And while Petitioners argue that Conrail is the only relevant "carrier" under § 1333.3, they do not identify any language in the regulation that would support that conclusion given that it is CSXT and NS that provide freight rail service to and from the Philadelphia SAA, with Conrail acting as their agent. The current Rail Operating Service Agreement, entered into in 2000, provides that "the Trunk Lines" are "solely responsible for negotiating suitable commercial arrangements . . . with Shippers for line-haul, terminal and accessorial freight charges" and defines "Trunk Line" as "Norfolk Southern and CSX Transportation and/or any other trunk line railroads which may in the future provide rail service to the Fairless Industrial Park." (Id. at Fleischman Declaration, Ex. C, paras. 1, 10.)[5] Consistent with the court's decision addressing this very issue in CSXT v. B&J, CSXT and NS have authority to assess demurrage at the Philadelphia SAA.

Petitioners separately argue that "a warehouseman cannot reasonably be expected to understand the complicated relationship between these three distinct railroads." (Pet. 12.) They contend that the notice should "make the warehousemen aware of the relationship with Conrail" and that the notice "provided to date is clearly inadequate." (Id.) But 49 C.F.R. § 1333.3 does not require that the carrier explain its relationship with its agents; it requires only that the carrier provide notice of the terms of the governing tariff. In any event, CSXT's and NS's tariffs do make clear their relationship to Conrail for purposes of demurrage. CSXT Tariff 8100 states that "[t]he Terms and Conditions of Service published here apply to . . . all railcars while on . . . the tracks of Conrail while under a CSXT waybill."[6] (Pet., Ex. C at 3.) NS Tariff 6004-D incorporates "NS Conditions of Carriage #1 – Series" (NS Conditions) by reference. (Pet., Ex. D at 2.) NS Conditions provides that "Conrail participates in such transportation solely as a private switching railroad on behalf of NS and not as a participating carrier in the transportation." NS Conditions of Carriage #1E at 15 (effective July 1, 2023),

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[4] The Rail Operating Service Agreement governing Conrail's operations within the Philadelphia SAA reflects this structure. Section 3 grants Conrail operating rights over the industrial park track and joint use track at Keystone. (Pet., Fleischman Decl., Ex. C.) Section 10, titled "Railroad Shipper Relations," provides that the "trunk lines" (CSXT and NS) bear sole responsibility for negotiating commercial arrangements with shippers, including accessorial charges such as demurrage. (Id.)

[5] Petitioners cite to an earlier version of the Rail Operating Service Agreement to argue that Conrail is the entity with sole responsibility for those matters, but that version of the agreement was entered into in 1997—before CSXT and NS jointly acquired control of Conrail. (Pet. 6, 10, 11; id., Fleischman Decl., Ex. C at Ex. T, ¶10.)

[6] The court in CSXT v. B&J found that an earlier CSXT tariff under consideration in that case extended to CSXT's "rail subsidiaries and affiliates," including Conrail. 381 F. Supp. 3d at 442-43.

https://www.norfolksouthern.com/en/ship-by-rail/shipping-tools/terms-conditions (last visited Nov. 10, 2026).

For these reasons, the Board concludes that Petitioners have not shown the notice B&J received of the applicable tariffs was inadequate under 49 C.F.R. § 1333.3.

Whether Demurrage May Be Assessed for Cars Held at Fairless Yard. Petitioners argue that because the underlying real property of Fairless Yard is owned by NorthPoint, a private entity, the track of Fairless Yard is private track. (Pet. 12-14.) Therefore, according to Petitioners, the demurrage charges were improper because they were assessed on private cars held on private track. (Id. (citing R.R. Salvage, NOR 42102 et al., slip op. at 7); Ind. Harbor Belt R.R. v. Jacob Stern & Sons, 37 F. Supp. 690, 692 (N.D. Ill. 1941); Demurrage Liability, EP 707, slip op. at 15 (STB served Apr. 11, 2014).) Petitioners also contend that, because B&J, as a tenant of Keystone, "has the right to use the rail infrastructure and pays to maintain it," "any rail operation in Keystone takes place on private track owned by NorthPoint." (Pet. 14; see also id. at 11.) CSXT and NS respond that Petitioners' argument misapplies Board precedent and that the Fairless Yard tracks are railroad property because Conrail has operating rights over those facilities.[7] (CSXT Reply 7-8; NS Reply 7-8.)

As noted above, demurrage "compensate[s] the railroad for use of its assets (i.e., the space on its track or at its yards), and . . . encourage[s] more efficient use of freight cars on its system." N. Am. Freight Car Ass'n v. BNSF Ry., NOR 42060 (Sub-No. 1), slip op. at 9 (STB served Jan. 26, 2007), aff'd sub nom. N. Am. Freight Car Ass'n v. STB, 529 F.3d 1166 (D.C. Cir. 2008); accord Demurrage Liability, EP 707, slip op. at 15; Pol'y Statement, EP 757, slip op. at 1-2, 4-5, 9. Based on this principle, the Board has concluded that "demurrage charges may be applied to privately owned cars when held on railroad property." Demurrage Liability, EP 707, slip op. at 15. Conversely, "demurrage charges may not be assessed when private rail cars are held on private track, because the railroad is not being deprived of any of its assets." R.R. Salvage, NOR 42102 et al., slip op. at 7 (citing Chrysler Corp. v. N.Y. Cent. R.R., 234 I.C.C. 755, 759 (1939)).

Here, Petitioners have not shown that Fairless Yard is private track and therefore that demurrage charges were improper.[8] While NorthPoint owns the property underlying Fairless Yard, (see CSXT Reply 7), the record demonstrates that the relevant tracks at Fairless Yard are either owned or leased by Conrail. See CSXT v. B&J, 381 F. Supp. 3d 438, 440–41 (E.D. Pa.

[7] CSXT and NS do not dispute Petitioners' characterization of the cars at issue as private. (See CSXT Reply 7-8; NS Reply 7-8.)

[8] Private track is outside the Board's jurisdiction, B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., 6 S.T.B. 280, 281 (2002), and is "typically built and maintained by a shipper (or for a shipper at the shipper's expense) and operated by the shipper (or its contractor) to serve only that shipper, moving the shipper's own goods," V&S Ry.—Pet. for Declaratory Ord.—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 8 (STB served July 12, 2012) (citations omitted) (quoting B. Willis, C.P.A., Inc.—Pet. for Declaratory Ord., FD 34013, slip op. at 2 (STB served Oct. 3, 2001)). In contrast, ancillary track, see 49 U.S.C. § 10906, and mainline track, see 49 U.S.C. § 10903, are both subject to the Board's jurisdiction.

2019).[9] Conrail uses the tracks for staging, classification, and switching cars to and from CSXT and NS. (CSXT Reply 8.) Notably, Conrail operates Fairless Yard to serve multiple shippers and warehousemen, not B&J alone. (Pet. 4.)[10] On these facts, the yard is "railroad property" for purposes of Demurrage Liability's provision that "demurrage charges may be applied to privately owned cars when held on railroad property." Demurrage Liability, EP 707, slip op. at 15.

This conclusion is consistent with the broader purpose of demurrage, which turns in part on whether a railroad asset is being occupied, preventing the railroad from using it.[11] See R.R. Salvage, NOR 42102 et al., slip op. at 5 ("[W]hen a shipper's privately owned rail cars are idled on the railroad's tracks, it is depriving the railroad of the use of that track.") When B&J's cars occupy Fairless Yard beyond the applicable free time, they occupy track that Conrail uses to serve other shippers and to keep cars moving through the Philadelphia SAA—the type of interference with rail operations that demurrage is designed to address. See id. Thus, the demurrage charges assessed for cars detained at Fairless Yard beyond the applicable free time are not barred on the ground that the Fairless Yard facilities are private track.

Conclusion. For the reasons set forth above, the Board will issue a declaratory order finding that: (1) Petitioners have not shown that the notice B&J received of the applicable tariffs was inadequate under 49 C.F.R. § 1333.3, and (2) B&J's cars held at Fairless Yard beyond the applicable free time are subject to demurrage.

It is ordered:

1. The petition for a declaratory order is granted.

2. The relief requested in the petition is denied.

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[9] The district court's opinion recites this description as part of B&J's own argument that CSXT lacked authority to charge it demurrage.

[10] Although Yookel has its own "irrevocable, non-exclusive rights" to use the Fairless Yard trackage for rail access and railroad staging, Yookel's rights are expressly subject to the rights of others, including owners, tenants, and occupants at Keystone lawfully using their rights. (Pet., Fleischman Decl., Ex. A para. 1.01); see also Yookel v. U.S. Steel, No. 22-655, 2023 WL 3033512, at *1 (2d Cir. Apr. 21, 2023) (quoting Real Estate Agreement para. 1.01). B&J's payment of maintenance fees to NorthPoint does not expand these rights. Cf. Yookel v. U.S. Steel, No. 22-655, 2023 WL 3033512, at *1-2 (describing the annual maintenance fee as the quid pro quo for U.S. Steel's maintenance of the Common Area Rails, and the Real Estate Agreement as covering "fees for maintenance services only").

[11] Demurrage is also intended to promote fulfillment of "the national needs related to" freight car use and distribution and to promote an adequate car supply. 49 U.S.C. § 10746; Demurrage Liability, EP 707, slip op. at 2; see also Pol'y Statement, EP 757, slip op. at 9 (explaining that demurrage serves "to encourage the efficient use of rail assets (both equipment and track)").

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.