

March 12, 2024

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Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

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Re: URGENT ISSUES IN FREIGHT RAIL SERVICE—RAILROAD REPORTING, STB Ex Parte No. 770 (Sub-No. 1)

Dear Ms. Brown:

The Private Railcar Food & Beverage Association (“PRFBA”) respectfully submits this letter in opposition to the motion of the Union Pacific Railroad Co. (“UP”) for a protective order regarding employment data that UP is required to file with the Board in accordance with the Board’s order in this proceeding issued on January 31, 2024. As in PRFBA’s recent filing supporting the continuation of reporting all data in this proceeding, it stresses the importance of this data to rail shippers who use this information to track the performance of their rail carriers.

PRFBA is comprised of 16 global food and beverage companies and manufacturers headquartered in North America. These members include Frito-Lay (PepsiCo), Molson Coors Beverage Company, KraftHeinz Food Company, General Mills, Inc., McCain Foods USA, Inc., Nortera Foods/Bonduelle Americas, Tropicana Brands Group, Boardman Foods, Inc., G3 Enterprises, Inc., JD Irving/Cavendish Farms, Simplot, Lamb Weston Holdings, Inc., Univar Solutions, Land O’ Lakes, Inc., National Sugar Marketing, LLC, and Leprino Foods. All are major rail shippers that rely on the railroads to produce and distribute their food and beverage products that are vital to the health and welfare of our nation and essential to feeding its citizens. Without adequate rail service, their food and beverages will not be on American store shelves.

Moreover, PRFBA members all own or lease railcars. As such, they absorb costs associated with equipment ownership, operation, and maintenance. Railroad employment greatly affects the ability to fully utilize PRFBA members’ rail cars. If there is a shortage or ineffective deployment of railroad personnel, especially under Precision Scheduled Railroading, this can result in “parking” assets which is seldom a wise financial decision. PRFBA members invest millions of dollars in rail cars. They have skin in the game and deserve to be treated as such.

After UP filed its motion for a protective order regarding the employment data reporting required by the Board’s January 31, 2024 Order, UP then submitted its publicly filed January employment report which contained essentially no data, but assumed that the Board would grant UP’s separately filed motion for a protective order. UP has now filed a second employment data report that was heavily redacted and mostly denoted as confidential and not publicly disclosed or commercially confidential, meaning it is not available to anyone other than the Board; and it is not apparent which items in the report were covered by which designation.

PRFBA notes that UP has not explained why the reporting requirements in the January 31 order create concerns about disclosure of supposedly confidential information that were not present under the Board's earlier requirements in this Docket for disclosure of information related to employment levels, hiring and retention efforts-requirements that did not cause UP to seek a protective order regarding those disclosures. Furthermore, disclosure of the sort of information requested by the Board is hardly unprecedented when similar information is disclosed by the carriers in R-1 reports and other monthly reports that have been filed and publicly accessible for decades or can be derived from those reports.

The need for public disclosure of the employment-related information that UP is to provide to the Board is emphasized when one considers the recent actions of UP to furlough many of its workers. These and other actions indicate that UP engaged in the furloughs not because they were necessary (according to data reported to the Board, UP's reductions in its workforce of 26% since 2016 and 17% since 2019 far exceed its negligible reductions in volume of 3% since 2016 and 1% since 2019), but rather to artificially lower its Operating Ratio for the fourth quarter of 2023. PRFBA members commonly examine employment information and would consider it extremely arbitrary to limit their access to data which has been of such great value in the past. Consequently, PRFBA urges the Board to deny UP's request.

Respectfully submitted,

/s/ Herman Haksteen

Private Railcar Food & Beverage Association
President
Herman Haksteen