

CONTRACT RATES BY RAILROADS

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The Staggers Rail Act of 1980 permits the railroads to enter into contracts with shippers. While contracts were entered into before the Staggers Act they were under a cloud as to their legality.

All contracts must be filed with the I.C.C. on 30 days notice although prior permission from the Commission has been given for filing on one days notice.

Each contract shall be filed with the Commission together with a summary of the contract containing such nonconfidential information as the Commission prescribes. The Commission shall publish special tariff rules for such contracts in order to assure that the essential terms of the contract are available to the general public in tariff format.

Contracts, other than contracts for the transportation of agricultural commodities, can be complained against only on the grounds that a shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet their common carrier obligation.

Ports can complain against contracts on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

In addition to the above ground, contracts for the transportation of agricultural commodities (including forest products and paper) may be complained against by a shipper on the grounds that such shipper individually will be harmed because:

1. The rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and the complaining shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered or
2. The proposed contract constitutes a destructive competitive practice. In determining this ground the Commission shall consider the difference between contract rates and published single car rates.

The Commission must decide whether to institute a proceeding within the 30 day filing period. Within 30 days after the proceeding is commenced, the Commission must decide whether the contract is in violation of the above criteria as to agricultural contracts. If so found the Commission shall order such carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

If the Commission fails to disapprove such contract by the end of the 60 day period such contract becomes effective. It cannot become effective before the expiration of the filing period.

The Commission may limit the right of a rail carrier to enter into future contracts following a determination that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations.

Contracts which are approved by the Commission are no longer subject to Commission jurisdiction and remedies for breach are in the court system.

Carriers may enter into contracts for the transportation of agricultural commodities (including forest products and paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carriers owned or leased equipment by major car types - for instance, covered hopper cars - except that a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car type, not more than 40 percent of the carriers owned or leased equipment utilized on the average by the carrier during the prior three year period may be used for such contract without prior authorization of the Commission.

On the request of a carrier, or on its own initiative, the Commission may grant such relief from these limitations as it considers appropriate if it appears that additional equipment may be made available without impairing the carriers ability to meet its common carrier obligations.

COMMENT

On November 4, 1982 after a delay of two years, the Commission issued its tariff rules for the filing of contracts to, as the law says, "assure that the essential terms of the contract are available to the general public in tariff format," 367 I.C.C. 9.

The Commission considers the thrust of the contract rate provision to require as much confidentiality as possible with regard to rates and charges. One Commissioner claimed that full disclosure of all rate provisions would have a chilling effect on future contract activity.

On all contracts the carriers will have to provide a summary of the contract containing the names of the participating carriers, the commodity being hauled, the duration of the contract, the number of dedicated cars and a list of special service features. In addition summaries of contracts for hauling agricultural commodities, forest products or paper are to contain the origin and destination stations, the base rates or charges, the movement type, the minimum annual volume and description of escalation provisions. On contracts involving movements to or from a port the summary must also disclose the base rate, the movement type, minimum volume, escalation provisions, the name of the port and the tariff mileage.

It should be noted that "base rates" are current-published rates and reveal no information as to actual rates in the contracts or discounts from the base rate.

The carriers have become increasingly secretive as they determine the outer limits of Commission permissibility regarding notice to shippers of the essential terms of the contract.

The Commission periodically releases a summary of contracts filed with it. In December 1979 a contract was listed between the Western Pacific Railroad and Ford Motor Company where Ford agreed for five years to give 95% of its autos and auto parts business to Western Pacific from Salt Lake City to Milpatas, CA. Established rates are to apply with the Western Pacific paying an unspecified allowance for the tender of 30 cars and unspecified payments for late arrival of cars.

Not much information but something.

Contrast this to a recent filing recorded in **Contract Advisory Service Summary No. 13: "AT&SF contract 1718182, on malt liquor at tariff rates - origin and destination not announced - car supply boxcars - special features - annual volume allowance, 1 year duration."**

It is common practice to not reveal the shipper, the origin and destination or any other specifics of the contract.

Is it any wonder that, to the writer's knowledge, not a single contract has been disapproved on the grounds that it would impair a carriers common carrier duty or unreasonably discriminate between ports or between agricultural shippers.

Some months ago a large grain shipper sought discovery as to one of these vague contracts to determine if it would be harmed. The Commission refused to provide any additional information on the grounds that confidential information need not be revealed.

The Water Transport Association; the Gulf Ports Association and Grain Transportation Consultants of the Pacific Northwest have sued in U. S. District Court seeking to force the I.C.C. to issue rules concerning the amount of disclosure which must be made in summaries of contracts filed with it.

THE USE OF CONTRACTS IN MERCHANDISING

The possibilities for the use of contracts are endless, ranging in time from one day, one month or ten years in duration. Generally the shipper seeks an assured supply of cars and predictable (and in some cases guaranteed), delivery at a firm price usually subject to escalation as measured by an agreed index.

Coal moving from known origins to known destinations in known volume is particularly adaptable to contract.

The Norfolk Southern has contracts with guarantees on both sides: that the coal will be mined on schedule, that the rail cars will move on schedule, that vessels will arrive on schedule and that the rates to be charged in the future are fixed subject only to inflation.

The Southern Railway has a ten year contract to haul bituminous steam coal to various destinations. The Southern assesses the shipper an annual charge plus line haul rates based on distance of the haul. A maximum of 66 open top cars are dedicated per month to the service. Rate escalation, limited free time to load and unload, disability provisions and diversion provisions are included.

The Soo Line on August 1, 1982 filed a contract as follows:

Wheat - Tariff Rate - Origin and Destination - Not Shown - Car
Supply - does not exceed 40% - Allowance for minimum percent of
business - 2 months duration.

Anything mutually beneficial to a railroad and a shipper can be
the subject of a contract:

Assured car supply.
Dependable delivery with penalties.
Stated quantity per unit of time.
Allowances for minimum percent of business.
Agreement to upgrade track in return for business.
Contracts have been made to store paper products in surplus rail
cars.
Annual volume requirement with penalties.

About 2,200 contracts are now on file with the Commission. By far the largest number of contracts involve allowances (obviously reduced rates) for minimum volumes, annual volumes, quarterly volumes, minimum percent of business and guaranteed volumes.

As an aside, if these contracts are designed to increase railroad traffic by taking it away from the trucks they may be helpful to the industry. If, however, they are designed to take traffic away from other railroads, they will be detrimental to the industry and helpful only to certain shippers.