

Y4
.C 73/2

1041

F88
C73
8714

F88

FREIGHT CAR SHORTAGE

GOVERNMENT
Storage

HEARINGS
BEFORE THE
FREIGHT CAR SHORTAGE SUBCOMMITTEE
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE
EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 886 and S. 1840

SIMILIAR BILLS TO AMEND SECTION 1(14)(a) OF THE
INTERSTATE COMMERCE ACT TO INSURE THE ADEQUACY
OF THE NATIONAL RAILROAD FREIGHT CAR SUPPLY,
AND FOR OTHER PURPOSES

JUNE 13 AND 14, 1961

Printed for the use of the Committee on Commerce



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1962

73157

KSU LIBRARIES
A1J900 965698 ✓
006174

NY
S/270.
837

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
A. S. MIKE MONRONEY, Oklahoma
GEORGE A. SMATHERS, Florida
STROM THURMOND, South Carolina
FRANK J. LAUSCHE, Ohio
RALPH YARBOROUGH, Texas
CLAIR ENGLE, California
E. L. BARTLETT, Alaska
VANCE HARTKE, Indiana
GALE W. MCGEE, Wyoming

ANDREW F. SCHOEPPPEL, Kansas
JOHN MARSHALL BUTLER, Maryland
NORRIS COTTON, New Hampshire
CLIFFORD P. CASE, New Jersey
THRUSTON B. MORTON, Kentucky
HUGH SCOTT, Pennsylvania

EDWARD JARRETT, *Chief Clerk*
HAROLD I. BAYNTON, *Chief Counsel*
JOHN M. McELROY, *Assistant Chief Counsel*
JEREMIAH J. KENNEY, Jr., *Assistant Chief Clerk*
GERALD B. GRINSTEIN, *Staff Counsel*

SUBCOMMITTEE ON FREIGHT CAR SHORTAGE

WARREN G. MAGNUSON, *Chairman*

GEORGE A. SMATHERS, Florida

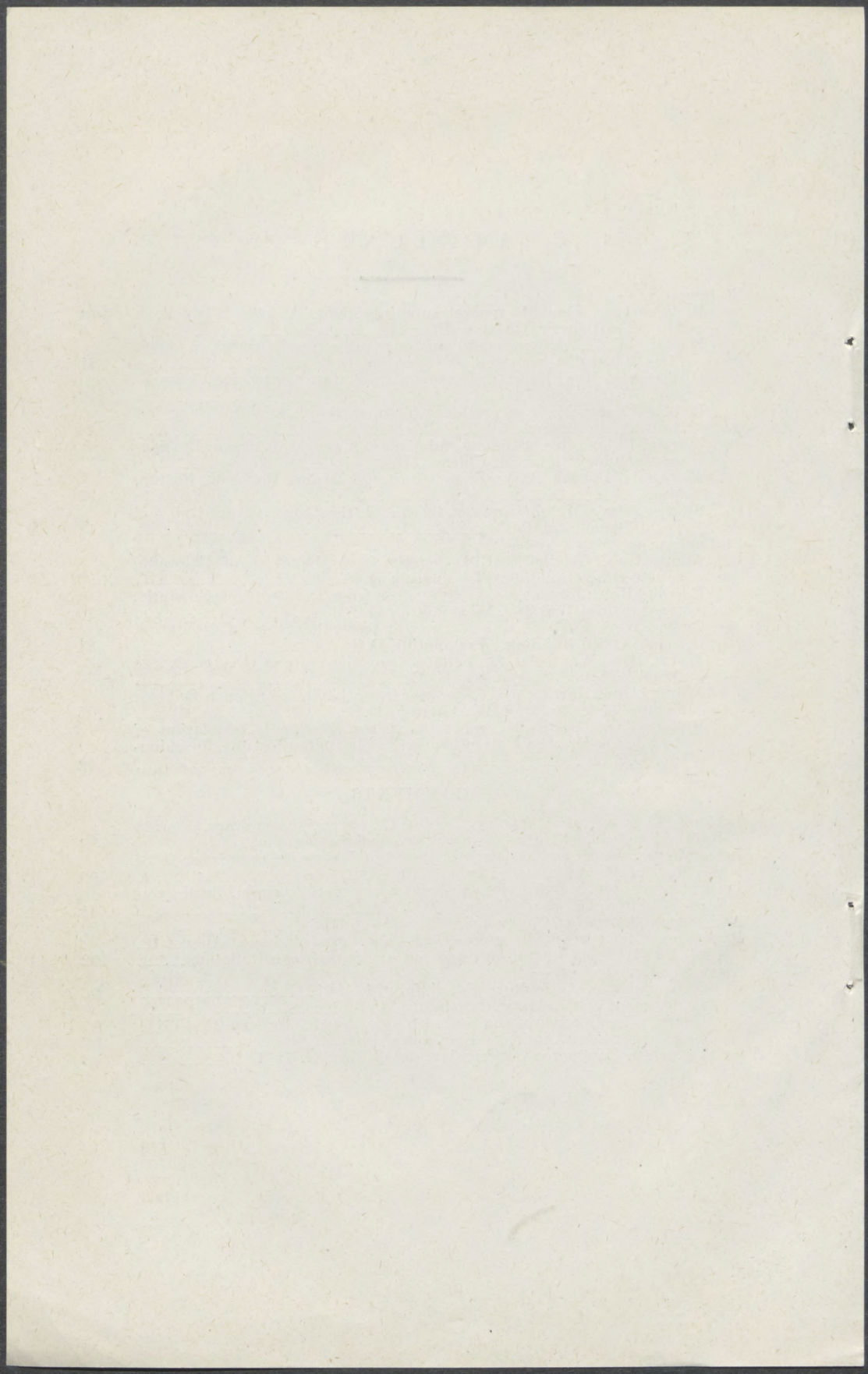
ANDREW F. SCHOEPPPEL, Kansas

CONTENTS

Statement of—	
Baumgartner, Donald, general superintendent, Atchison, Topeka & Santa Fe Railway, Chicago, Ill.....	Page 6
Hickey, W. J., vice president and general counsel, American Short Line Railroad Association, Washington, D.C.....	81
Hutchinson, Hon. Everett, Chairman, Interstate Commerce Commission, Washington, D.C.....	2
Leilich, George N., vice president for operations, Western Maryland Railway, Baltimore, Md.....	48
Martin, Eldon, vice president and general manager, Chicago, Burlington & Quincy Railroad, Chicago, Ill.....	51
McGinnis, Patrick B., president, Boston & Maine Railroad, Boston, Mass.....	32
Symes, James M., chairman of the board, the Pennsylvania Railroad Co., Philadelphia, Pa.....	11
Statements submitted by—	
Allott, Hon. Gordon, a U.S. Senator from the State of Colorado, Senate Office Building, Washington, D.C.....	50
Carroll, Hon. John A., a U.S. Senator from the State of Colorado, Senate Office Building, Washington, D.C.....	90
Curtis, Hon. Carl T., a U.S. Senator from the State of Nebraska, Senate Office Building, Washington, D.C.....	81
Morse, Hon. Wayne, a U.S. Senator from the State of Oregon, Senate Office Building, Washington, D.C.....	91
Mundt, Hon. Karl E., a U.S. Senator from the State of South Dakota, Senate Office Building, Washington, D.C.....	95
Roberts, Jr., Austin L., general solicitor, National Association of Railroad & Utilities Commissioners, Post Office Box 684, Washington, D.C.....	92

COMMENTS

Letters, telegrams, etc.: Stanley, Bolling C., executive secretary, Florida Railroad & Public Utilities Commission, Tallahassee, Fla.....	90
Letter from Jack Holmes, chairman, Board of Railroad Commissioners of the State of Montana, dated June 1, 1961.....	99
Letter from Eldon Martin, vice president and general counsel, Burlington Lines, Chicago, Ill., dated August 30, 1961.....	101
Article from Journal of Commerce, dated July 5, 1961.....	100
Report on "Bad Order Situation—Class I Railroads," issued August 18, 1961, by Car Service Division, Association of American Railroads.....	102
Agency comments from—	
Department of Agriculture, dated July 21, 1961.....	96
Department of the Army, dated July 21, 1961.....	96
Comptroller General of the United States, dated February 24, 1961..	97
General Services Administration, dated July 24, 1961.....	97
Interstate Commerce Commission, dated May 31, 1961.....	98



FREIGHT CAR SHORTAGE

TUESDAY, JUNE 13, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee was called to order, pursuant to notice, at 10 a.m., in room 318, Old Senate Office Building, Hon. Andrew F. Schoepfel presiding.

Senator SCHOEPEL. Let the record show that the meeting is called to order on hearings on S. 886 and S. 1840.

At the outset of the hearing I desire to make a short statement.

Our hearings today and tomorrow will take up S. 886 and S. 1840, identical bills which would amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply. Similar legislation was favorably reported to the Senate floor in the last Congress by this committee.

Under present law there is a compulsory interchange law requiring the owner of a freight car to permit its use by other railroads. The maximum daily fee is \$2.88. The ICC, National Association of Railroad and Utility Commissioners, and certain railroads and shippers believe this fee too low to cover the costs of ownership, resulting in a freight car supply critically inadequate to meet normal commercial demands as well as national defense requirements.

S. 886 would authorize the Commission, in establishing a per diem charge for the use of freight cars, to determine whether such charge should be computed upon the basis of the elements of ownership expense involved, including a fair return on value, or on elements reflecting the value of their use, or upon such other basis or combination of bases as, in the Commission's judgment, will provide reasonable compensation to the owner, contribute to sound car service practices, and encourage the acquisition of an adequate national supply of freight cars. It is planned to make the advantages of owning equipment attractive, resulting in a greater willingness on the part of every railroad to increase its contribution to the national freight-car fleet.

(Bills follow:)

[S. 886, 87th Cong., 1st sess.]

A BILL To amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(14)(a) of the Interstate Commerce Act is amended by adding at the end thereof a new section reading as follows: "In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to

NOTE.—Staff member assigned to this hearing: Gerald B. Grinstein.

other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

[S. 1840, 87th Cong., 1st sess.]

A BILL To amend section 1 (14) (a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(14) (a) of the Interstate Commerce Act is amended by adding at the end thereof a new sentence reading as follows: "In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

Senator SCHOEPEL. I regret that by reason of other committee assignments we may not have some of the other Senators who are interested appear until later on.

I notice that as the first witness this morning, we have the honor of having the Chairman of the Interstate Commerce Commission, Mr. Everett Hutchinson. We will be very glad to hear you, Mr. Chairman. I notice you have a prepared statement, and you may proceed, sir.

First, let the record show that Senator Gordon Allott was to appear this morning, but I have just received information that he desires to file a statement which will be incorporated into and made a part of the record in these proceedings.

Chairman Hutchinson.

**STATEMENT OF HON. EVERETT HUTCHINSON, CHAIRMAN,
INTERSTATE COMMERCE COMMISSION**

Mr. HUTCHINSON. Mr. Chairman, and members of the subcommittee, my name is Everett Hutchinson. I am the present Chairman of the Interstate Commerce Commission and have served in that capacity since January 1 of this year. I am appearing today to testify on the Commission's behalf on S. 886 and S. 1840. S. 886 was introduced by the chairman of this committee for himself and 31 other Senators on February 9, 1961. S. 1840 was also introduced by the chairman on May 11, 1961, and would give effect to Legislative Recom-

mentation No. 2 as contained in the Commission's 74th annual report to Congress.

These two measures, which are identical, would grant to the Commission authority to prescribe per diem charges for the use of railroad freight cars on a basis that will provide an incentive to the railroads to acquire and maintain a supply of freight cars adequate to meet the needs of commerce and of the national defense. While many different factors contribute to freight car shortages, the two principal causes are inadequate car ownership and the failure to utilize existing equipment efficiently.

The diminishing supply of railroad freight cars has, as this committee knows, been a matter of considerable concern to the Commission for many years. The ownership of freight cars is less today than it was during World War II, in spite of the generally expanding economy of our country. The result is that critical shortages, of varying duration and severity, have occurred in almost every year during periods of peak loadings. As far back as 1950 studies indicated that a total of 1,935,500 freight cars would be required by 1956 to meet the anticipated needs of shippers. Nevertheless, on January 1, 1956, freight car ownership and control by class I railroads—and this includes railroad-owned or railroad-controlled refrigerator cars—amounted to only 1,774,616 cars. As of February 1, 1961, even this figure had dropped to a total of 1,725,421 cars and by May 1, 1961, the total was down to 1,710,869 cars. There is attached to my statement a table marked "Exhibit A," Mr. Chairman, which indicates the trend in car ownership and control, as well as in cars ordered, retired, and installed during the past 12 years.

The Commission believes that in view of the recurring critical shortages of freight cars experienced by our Nation, it is imperative that ownership of such equipment be increased and maintained at a level capable of meeting the needs of the shipping public during normal times and at the same time providing a reasonably adequate supply during periods of emergency.

During these periods when critical shortages have occurred, the Commission has resorted to every means at its command to cope with the problem. Greatly stepped-up demurrage charges have helped to insure prompt loading and unloading, insofar as shippers and receivers are concerned. Such action, however, is ineffectual during that phase of car movement and handling when the equipment is in the hands of the carriers.

The earning value of the average freight car far exceeds the current per diem charge of \$2.88. Hence, some of the carriers have found it cheaper to pay the per diem or car rental charge than to own the cars. Such carriers, therefore, obviously have no economic incentive to provide their fair share of an adequate car supply. In other words, if the advantage of renting equipment could be made less attractive during times of car shortage, there would be a greater willingness on the part of every railroad to make its just and equitable contribution to the national car fleet.

Some time ago the Commission attempted to take the profit out of renting equipment by the imposition of a penalty per diem charge which, it was believed, would furnish a pecuniary spur to deficit railroads to acquire a sufficient number of cars to at least take care of

their own loading requirements. But the Court, upon complaint of certain railroads generally deficient in car ownership, set aside the Commission's order. Actually, the legal implications of that decision are not clear. In essence, the Court believed the record before the Commission to have been faulty and incomplete and that the findings of fact by the Commission were not adequate to sustain its order. Interpretation by the Court of the word "compensation" was narrow and extremely limited. The Court further held that the Commission could not prescribe per diem charges for regulatory purposes. The effect of this decision has been construed as saying that the Commission is precluded from prescribing per diem charges which would produce a profit to the carrier owner, provide an incentive for car ownership, recognize the value of the use of freight cars, and require the acquisition and maintenance of a car supply adequate to meet the needs of commerce and of the national defense. While the Court case may not place the severe and stringent limitations upon the Commission which some suggest, we believe that there is sufficient doubt in this respect that it should be made clear in the statute that the Commission does have the authority to establish per diem charges above the bare costs of ownership and at a level that would make the advantages of owning equipment more attractive. The Commission should be unfettered by such a severe, limited interpretation in its effort to fix per diem rates which would, in the language of the bill that is under consideration—

provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

The measures being considered here today, Mr. Chairman, would, we believe, go a long way toward the accomplishment of this objective by authorizing the Commission to prescribe per diem charges on a basis that would provide an economic incentive to the carriers to acquire and maintain an adequate supply of freight cars. If this legislation is enacted, the Commission's first step would be to determine the extent to which the railroads are deficient in car ownership. This would involve a comprehensive study of traffic requirements, including peak loadings. Separate studies, of course, would be necessary for various types of equipment, such as box, gondola, flat, hopper, refrigerator, stock, and other special types of cars. Consideration would also be given to the type and flow of traffic and whether the carrier is predominantly an originating, terminating, or bridge line.

In conclusion, it should be emphasized that no sudden or overnight increase in per diem charges is contemplated if this proposal is enacted, since section 1(14) of the act, which these bills would amend, provides for a hearing either upon complaint or upon the Commission's own initiative.

The Commission urges favorable consideration of either S. 886 or S. 1840.

Mr. Chairman, we appreciate the opportunity to appear and express our views with respect to this proposed legislation, and if there are any questions, I will be glad to try to answer them.

EXHIBIT A

Year	Freight car ownership (as of Jan. 1)	Freight cars ordered	Freight cars retired	New freight cars installed
1949	1,838,689	6,223	90,348	84,669
1950	1,833,010	155,732	76,179	42,067
1951	1,798,898	92,231	53,028	87,727
1952	1,833,597	34,369	62,240	67,420
1953	1,838,777	33,565	50,123	69,394
1954	1,858,048	21,976	71,858	30,562
1955	1,816,752	166,603	73,491	37,509
1956	1,774,616	41,794	49,853	61,615
1957	1,786,376	46,063	54,363	92,590
1958	1,824,603	17,538	65,005	41,172
1959	1,800,770	56,414	93,690	42,024
1960	1,749,104	37,605	70,335	49,227
As of May 1, 1961	1,710,869	7,620	26,582	11,117

Senator SCHOEPEL. Chairman Hutchinson, we appreciate your appearing here and giving us the benefit of your Commission's judgment with reference to this legislation. Many members of our committee have been somewhat more than just mildly alarmed at this decreasing freight car picture. The chart that you have presented as a part of your statement, and which is now made a part of the record, shows that situation to continue to exist.

No only you but previous chairmen and previous members of your Commission have felt the need for some such legislation, especially since this Court decision.

Mr. HUTCHINSON. Yes, Senator Schoepfel, thank you.

Senator SCHOEPEL. And I notice that you indicate here that if this legislation is passed, approved, and signed by the President, you contemplate moving into it in a very practical way to ascertain just what the situation is and what should be done to meet it.

Mr. HUTCHINSON. That would be our purpose, Senator, yes.

Senator SCHOEPEL. So there is no cause for any alarm at some drastic act on the part of your Commission which could, as some folks say, prove injurious to segments of the industry without having an opportunity to be heard fully and to evaluate what the situation was likely to entail.

Mr. HUTCHINSON. I am sure there is no cause for alarm in this area, Senator.

Senator SCHOEPEL. This is the type of legislation that you folks down there have recommended; have you not?

Mr. HUTCHINSON. Yes, it is, Senator Schoepfel.

Senator SCHOEPEL. Do any of your associates or staff people desire to have any further comments on it?

Mr. HUTCHINSON. Commissioner Tuggle is present in the hearing room.

Mr. TUGGLE. I don't believe I can add anything to the chairman's statement, Senator.

Senator SCHOEPEL. Mr. Tuggle, you appeared and testified in other proceedings that I recall.

Mr. TUGGLE. That is right.

Senator SCHOEPEL. And your views and your attitudes have not changed since that date; have they?

Mr. TUGGLE. No, sir. As a matter of fact the situation is causing some more concern than it has in the past because the freight car problem is still here.

Mr. HUTCHINSON. For the record, Senator, I might simply say that the Commission's position on these measures is a unanimous position.

Senator SCHOEPEL. I was going to ask that question; I am glad to have that in the record.

If you gentlemen have no further statements to make, that is all at this time.

Mr. HUTCHINSON. I believe that is all we have, Senator.

Senator SCHOEPEL. Thank you, Mr. Chairman, for appearing here this morning.

The next witness is Mr. D. A. Baumgartner, general superintendent of the Atchison, Topeka & Santa Fe Railway Co.

Good morning, sir, we are glad to have you present. I notice that you have a statement here, Mr. Baumgartner. Do you have any of your staff with you that you desire to have here with you this morning?

Mr. BAUMGARTNER. No, Senator, I do not.

Senator SCHOEPEL. We will be very glad to hear from you, sir; you may proceed.

STATEMENT OF DONALD BAUMGARTNER, GENERAL SUPERINTENDENT, ATCHISON, TOPEKA & SANTA FE RAILWAY, CHICAGO, ILL.

Mr. BAUMGARTNER. I might say that my statement is a rather brief one. I have read the statement that will be made by Mr. Eldon Martin in these proceedings, and the Santa Fe does support and subscribe to Mr. Eldon Martin's statement. To avoid duplication, why, as I say, my statement is rather brief.

The Santa Fe endorses and supports the aims of S. 886 under study which would authorize the ICC to fix fair and realistic rates of freight car hire.

The Santa Fe is greatly concerned about the freight car supply in the future unless there is a substantial increase in the national ownership. The following will show the total U.S. freight car ownership, excluding refrigerator and tank cars, as of January 1, 1954 to 1961, inclusive. The tabulation will also show the number of bad order freight cars, percentage of ownership bad order, and the number of serviceable cars:

	Ownership	Number bad order	Percent of ownership bad order	Number of serviceable cars
1954.....	1,750,342	86,848	5.0	1,663,494
1955.....	1,709,924	114,992	6.7	1,594,932
1956.....	1,667,451	70,229	4.2	1,597,222
1957.....	1,681,094	66,161	3.9	1,614,933
1958.....	1,719,808	87,192	5.1	1,632,616
1959.....	1,699,113	144,316	8.5	1,554,797
1960.....	1,651,420	119,921	7.3	1,531,499
1961.....	1,630,515	153,665	9.4	1,476,850

As compared to January 1, 1954, there has been a decrease in the ownership of 6.8 percent and a decrease of 11.2 percent in the number of serviceable cars. The latter is the result of the substantial increase in the number of bad order cars.

The boxcar has been the kind of car most seriously in short supply in past years. The following will show statistics similar to the above, for boxcars:

	Ownership	Number bad order	Percent of ownership bad order	Number of serviceable cars
1954-----	731,957	35,621	4.9	696,336
1955-----	717,043	37,581	5.2	679,462
1956-----	716,845	25,419	3.5	691,426
1957-----	725,477	28,430	3.9	697,047
1958-----	736,442	34,731	4.7	701,711
1959-----	722,732	50,721	7.0	672,011
1960-----	705,738	50,073	7.1	655,665
1961-----	692,565	58,005	8.4	634,560

As compared to 1954 there has been a decrease in ownership of 5.4 percent and a decrease in serviceable cars of 9.1 percent as of January 1, 1961.

Senator SCHOEPEL. If you do not mind, at this juncture in your testimony, Mr. Baumgartner, your statement and the figures set forth here by years shows a declining ownership of cars and correspondingly shows an increase in the number of bad order cars, and it is a pretty definite ratio there, isn't it?

Mr. BAUMGARTNER. Yes, sir, pretty substantial in both respects.

Senator SCHOEPEL. And, of course, a decrease in the number of serviceable cars, from 1954 to 1961. I thought that was noteworthy to have pointed out here in these proceedings, sir.

You may proceed.

Mr. BAUMGARTNER. As a matter of comparison, the Santa Fe's ownership and number of serviceable freight cars, excluding refrigerator and tank cars, has increased 10.8 percent and 10.1 percent, respectively, on January 1, 1961, as compared to January 1, 1954. Insofar as boxcars only are concerned, the Santa Fe ownership has increased 7.5 percent and the serviceable cars have increased 7.4 percent.

It is my belief that an upsurge in carloadings will result in freight car shortages of a serious nature. It is also my opinion that unless there is an increase in the per diem rate there will not be a sufficient increase in the national freight car ownership to take care of future loading demands. Railroads who terminate (unload) more freight cars than they originate (load) will not experience shortages of freight cars and will not be inclined to acquire additional freight cars if the existing per diem rate of \$2.88 continues to be the prevailing rate. The carriers who originate more traffic than they terminate will suffer the consequences of freight car shortages even though their ownership may be adequate for their needs. The cars of the latter carriers will be utilized by those lines whose traffic is predominantly of a terminating character.

More and more specialized freight cars are being demanded by shippers and are being placed in service. The cost of such cars is considerably more than the plain type of freight car that formerly was adequate for the shipping public. The cost of maintenance of the special type car is considerably greater than the common car. Certainly a per diem rate of \$2.88 is a deterrent to the acquirement of these special cars by many carriers.

In addition to accomplishing the basic objective of increasing the national freight car ownership, there are other benefits that would result from a higher per diem rate. There would be a better utilization of cars; the handling of empties by nonowners would be expedited, and there would be a faster and more substantial return of such cars to their owners. The result would be an increase in the number of home cars on owners' rails which would result in a more frequent inspection of the condition of such cars. They would be kept in better condition and the quality of the freight cars generally would be improved substantially, which would be of inestimable value to the industry as a whole. There is not the same inclination for a railroad to be concerned about the condition of another carrier's cars on its line and to spend the necessary sum of money to upgrade for high class loading as there is in the conditioning and upgrading of its own cars. A higher per diem rate also would be a deterrent to carriers who permit so many of their own cars to become bad order and unserviceable. The knowledge that the use of foreign instead of system cars for current loading would be more costly as a result of a higher per diem rate and would result in improved maintenance of system cars. This would reduce the large accumulation of bad order cars that has occurred in the past and exists at present, and which will prove to be a serious handicap in meeting shipping demands with resumption of normal loadings.

Senator SCHOEPEL. That concludes your statement?

Mr. BAUMGARTNER. That concludes my statement.

Senator SCHOEPEL. Mr. Baumgartner, I would like to ask you this question. Of course, as you know, I am out in the great wheat, grain producing areas, livestock sections of the country. Your railroad through different and sundry ways has kept up with the needs and requirements of your system and your related railroad systems out in that area. What is needed to take care of the movement of the grain crops as they come out of the harvest season? I think you folks have testified before that the advent of the combine forces and brings into the transportation market tremendous amounts of grain that have to be moved. Do you know what the situation is as to the present crop situation?

Mr. BAUMGARTNER. Well, yes, Senator. The yield is going to be very good. The harvest has been delayed a few days, a week or 10 days by recent moisture, but we expect again that that may result in a situation similar to that of last year where it eventually helped the yield. It will present some problems with respect to furnishing an adequate supply of cars, although we have prepared ourselves, we feel, adequately. Insofar as the number of cars that are available to take care of the harvest, that we have been able to do primarily because of the depressed car loadings naturally which has enabled us to get our hands on a pretty good supply of cars. However, as I say, in quantity we are all right, quality we are having a greater problem each year because these cars are getting older and there aren't the new cars being purchased and ordered that we feel there should be, so we are doing the best we can with what we have got. We are not too happy with what we have insofar as the quality of cars is concerned for this impending winter wheat harvest.

Senator SCHOEPEL. The great difficulty that has developed out in our area has been the condition of many of these cars that are offline cars to some of your railroads, coming through in extremely bad order, some of them unfit for use for the grain movement; that is, they are not graintight cars such as come out, generally speaking, from the grain-producing areas.

I remember very distinctly we had a lot of testimony that a lot of these cars that were made available would come into that area in extremely bad order and would need a tremendous lot of cooping to cooper them up and take care of them. Now, that situation still prevails, does it not?

Mr. BAUMGARTNER. Yes, sir. Like I say, it is even more pronounced presently than it has been in the past.

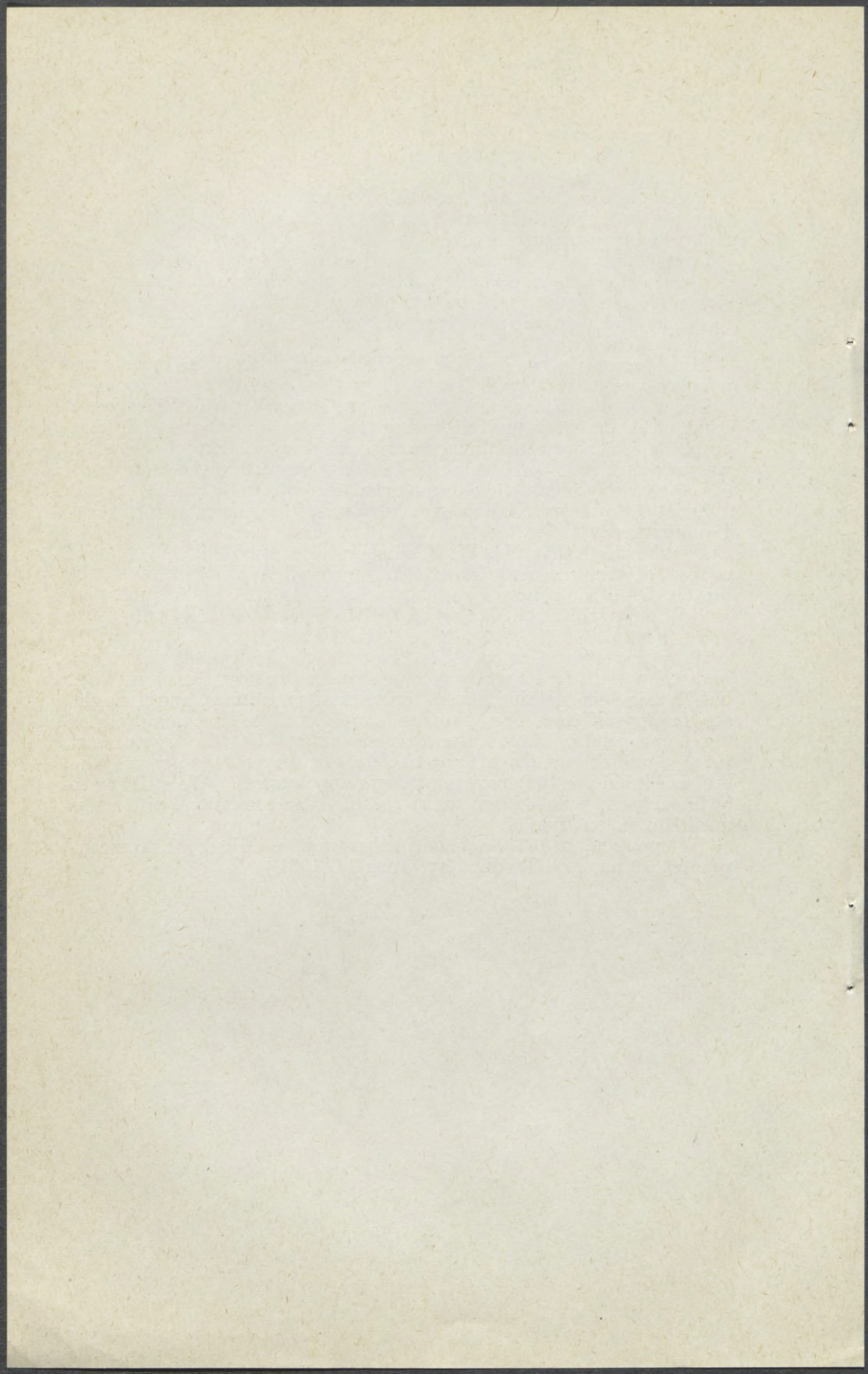
I would like to say also that we are somewhat apprehensive of what might happen this fall during the harvesting of the fall grain crops as economic conditions improve as everyone expects them to, we may have some problems this fall with respect to the number of cars that will be available to harvest the fall crops.

Senator SCHOEPEL. Thank you very much for your statement, Mr. Baumgartner.

I understand that Mr. W. J. Hickey, vice president and general counsel of the American Short Line Railroad Association of Washington, D.C., could not be present this morning. I understand that he will supply a statement later for the record and we will try to work that in.

Now, gentlemen, this concludes the number of witnesses this morning. As I indicated a while ago, we expected to hear Senator Allott, but he has been detained on other committee matters, and I might say for myself that I am supposed to be at three subcommittees of the Appropriation Committee this morning. We will try to start promptly tomorrow morning at 10 o'clock and hear the witnesses who are scheduled for tomorrow morning's appearances. We will try to hear everyone who desires to be heard. The committee will recess until 10 a.m., on June 14.

(Whereupon, at 10:30 a.m., the subcommittee adjourned, to reconvene at 10 a.m., on Wednesday, June 14, 1961.)



FREIGHT CAR SHORTAGE

WEDNESDAY, JUNE 14, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee was called to order, pursuant to notice, at 10 a.m., in room 6226, New Senate Office Building, Hon. Andrew F. Schoepfel, presiding.

Senator SCHOEPPPEL. The committee will come to order.

This is a continuation of the hearing on S. 886 and S. 1840.

The first witness this morning is Mr. James M. Symes, chairman of the board of the Pennsylvania Railroad Co.

Mr. Symes.

STATEMENT OF JAMES M. SYMES, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER OF THE PENNSYLVANIA RAILROAD CO.

Mr. SYMES. Good morning, sir.

Senator SCHOEPPPEL. I might say for the benefit of the record that some of the other committees are in operation on the Senate side this morning, which is one of the reasons why some of the other Senators who would have liked to have been here are not here.

Mr. Symes, I note you have a written statement here.

You may proceed in any way that you desire, sir.

Mr. SYMES. I would like to present it, sir, if I may.

Senator SCHOEPPPEL. You will be given that opportunity.

Mr. SYMES. My name is James M. Symes and I am chairman of the board and chief executive officer of the Pennsylvania Railroad Co. I have held this position since November 1, 1959. I have had a total of 45 years of railroad experience, all of which has been with the Pennsylvania Railroad, except for a period during which I was vice president-operation and maintenance of the Association of American Railroads.

During my term of service I have occupied various positions such as clerk, car tracer, car distributor, freight movement director, superintendent of passenger transportation, chief of freight transportation, general manager, vice president-operations, executive vice president, and president.

While I occupied the office of vice president-operation and maintenance of the Association of American Railroads, the car service division was immediately under my jurisdiction. During my entire rail-

road experience I have been closely connected with the problems of car supply and car utilization.

I am appearing in opposition to S. 886 and S. 1840, identical bills, which your subcommittee has under consideration. In addition to my own company, I am also speaking on behalf of the Ann Arbor Railroad Co., Atlantic Coast Line Railroad Co., the Baltimore & Ohio Railroad Co., Bangor & Aroostook Railroad Co., Bessemer & Lake Erie Railroad Co., the Central Railroad Co. of New Jersey, the Delaware & Hudson Railroad Corp., Detroit, Toledo & Ironton Railroad Co., Erie-Lackawanna Railroad Co., Lehigh & New England Railroad Co., Lehigh Valley Railroad Co., the Long Island Railroad Co., Maine Central Railroad Co., Missouri Pacific Railroad Co., the New York Central System, the New York, Chicago & St. Louis Railroad Co., Norfolk & Western Railway Co., Pennsylvania-Reading Seashore Lines, the Pittsburgh & Lake Erie Railroad Co., Pittsburgh & West Virginia Railway, Reading Co., Seaboard Air Line Railroad Co., Southern Pacific Co., Texas & New Orleans Railroad Co., Union Pacific Railroad, Union Railroad Co., and Wabash Railroad Co., and in addition, the Florida East Coast.

These railroads own 50.66 percent of the railroad freight car ownership in the United States. My appearance for my company and the railroads which I have listed is again occasioned by the fact—as in 1959 when I appeared in opposition to similar legislation—that a smaller group of other railroads, constituting 28.13 percent of the railroad freight car ownership, is appearing in support of S. 886 and S. 1840.

The lines of these two groups of railroads are shown, colored in heavy blue, on two maps which I have had prepared, marked as exhibits A and B. Exhibit A shows the lines of the railroads which I represent, and exhibit B shows the lines of the railroads which support these bills. It will be noted that the railroads opposing these bills are located in all sections of the Nation and particularly in the East, while the railroads supporting the bills are primarily in the West.

The smaller group of railroads which supports this bill had a rate of return on net investment of 2.89 percent in 1960. The railroads in opposition had a rate of return on net investment of only 2 percent in that year. The rate of return on net investment for all class I railroads in 1960 was 2.13 percent.

For the first 3 months of 1961, the railroads which I represent had a combined net income deficit of \$21.7 million as compared with a combined net income of \$22.3 million for the smaller group of railroads which supports these bills.

Also, this smaller group of railroads had a per diem net credit of \$37.5 million in 1960 as against a per diem net debit of almost \$1 million for the group of railroads which opposes this bill.

Thus, we have the economic picture of a small group of relatively prosperous railroads, which generally would stand to profit from S. 886 and S. 1840, opposed to a larger group, with greater car ownership, a substantial part of which would be financially burdened by its enactment, a burden which they cannot afford, and also one that cannot be justified.

For each nickel that the per diem rate is increased, the railroads supporting these bills would benefit by \$651,260, based on their 1960 operations. The costs of my railroad alone would be increased by \$343,875 for each nickel of increase in the per diem rate, based on 1960 operations.

Turning now to S. 886 and S. 1840, these bills purportedly have as their objectives the providing of an incentive for increasing the railroads' car ownership and the more expeditious return of cars in times of car shortages, all for the purpose of insuring the adequacy of the national railroad freight car supply.

No one can find fault with these objectives. Indeed, they are the goals of the entire railroad industry. But the stated purposes of these bills must be considered in the light of the means to be employed, which are objectionable. In fact, the enactment of this proposed legislation would defeat the very objectives for which it is designed.

S. 886 and S. 1840 would require the Interstate Commerce Commission to fix compensation for car hire by including factors which cannot be considered as properly reflecting the true cost of freight car ownership. By true cost of ownership I mean the full cost of acquiring and maintaining a freight car, plus a reasonable profit—no more or no less.

The ability of the present per diem rate to meet this test is obviously not the question here. That question is before the Commission in pending proceedings and requires no change in the law for its determination. The bills propose something to be added to the car-hire rate, not to reflect ownership costs, but as a device designed to accomplish a regulatory purpose.

Thus, the bills would direct the Commission to fix a return on value at such a level as to encourage the acquisition of cars or, for the same purpose, to compute a car-hire rate on the basis of elements reflecting value of use of freight cars—neither of which factors can be considered as costs of ownership.

Senator PASTORE (presiding). Are you now saying, in simple language, that the formula that was promulgated by the court decision fully covers the cost of ownership and the maintenance of the freight car?

Mr. SYMES. Plus a reasonable profit.

Senator PASTORE. Plus a reasonable profit?

Mr. SYMES. That is correct.

Senator PASTORE. And that these two bills are designed to build up a curb beyond that point for them to buy additional cars?

Mr. SYMES. That is correct.

Senator PASTORE. And that is the only objective of these bills that are pending before this committee?

Mr. SYMES. I will tell you my definition of this in centive per diem if that is what you want to call it—

Senator PASTORE. The reason I am asking these questions, sometimes we get lost in the real points being made by 15 or 16 pages of testimony, and I think the issue here is very, very simple and I think it ought to be told to the Congress of the United States in very simple language.

I am from one of those parts of the country that is serviced by only one railroad, the fact we can't fill up these cars, and return them to the owners who sent them in the first instance, is no fault of our own.

Mr. SYMES. None whatever, and I am coming to that specifically in my statement.

Senator PASTORE. All right, sir.

Mr. SYMES. In short, it is proposed that car hire should be fixed at a level higher than ownership cost, not to compensate the owner for the use of his property, but for the regulatory purpose of forcing railroads to own more cars.

Such a device was questioned by a three-judge Federal court in the District of Columbia in 1947 when it not only struck down a penalty per diem rate prescribed by the Commission as being beyond the Commission's statutory power, but also observed that it was—

so completely unrelated to the evil sought to be remedied [a car shortage] * * * that serious question would arise as to its validity as a regulation.

I have reference to *Palmer v. United States*, 75 Federal Supplement 63, at page 68. In its statement of justification in support of S. 1840, printed in the Congressional Record of May 11, 1961, the Commission stated that the bill, if enacted, would "overcome the effect of the decision in the *Palmer* case."

Also, it should be observed that there are about 200,000 private cars operating on the railroads of the United States.

The owners of these cars are paid a mileage rate based upon cost of ownership plus a reasonable profit. If you grant anything beyond that it would be considered a rebate and unlawful—the private shippers car. Yet, how can you justify a formula for per diem as between railroads different than the one used for private car mileage? And that is just what these bills would do.

In its report of June 29, 1959, recommending the passage of an identical bill, S. 1789 (86th Cong., 1st sess.), the Senate Committee on Interstate and Foreign Commerce stated that the purpose of insuring the adequacy of the national freight car supply would be attained, not by "arbitrary Government action," but by authorizing and directing the Commission, after hearing, to prescribe car rental charges upon a basis which will encourage the acquisition of freight cars, contribute to sound car service practices, and provide just and reasonable compensation to freight car owners.

I submit that under the very directives contained in these bills here under consideration, the Commission could take none other than arbitrary action nor, as I will point out, would such action contribute to sound car service practices.

As already stated, the resulting rate would perforce exceed just and reasonable compensation to the car owner, which is borne out by the committee's statement that this kind of bill would provide increased incentives through the operation of "economic laws" and the "profit motive."

The "economic laws" can only refer to the penalty of a high rate that would have to be paid in default of a certain level of car ownership, regardless of a carrier's need for such ownership, and the "profit motive" would be the higher than usual rate of return which the Commission would be directed to fix.

In the committee's report on S. 1789 the statement is made, repeatedly, that it is "cheaper for a railroad to rent a freight car than to own one," and that the per diem rate "provides no profit for the car owner, over and above the 'barebones cost of ownership,' if, indeed it is sufficient for that purpose."

The Commission has similarly represented to this committee that it is cheaper to rent cars than to own them. I challenge these statements.

The per diem rate is paid in lieu of ownership. In other words, the burden of renting has been deemed the financial equivalent of owning, and the Commission has so held.

The per diem rate covers not only the cost of ownership, but also includes a profit to the owner. Nor is the rate based on "barebones" cost factors. The present rate covers repairs, property taxes, depreciation, interest on investment, and miscellaneous expense incidental to ownership. And it should be noted that depreciation and a 6-percent return on investment are computed by using present-day reproduction value of freight cars, not their original cost. The use of these factors can hardly be described as "barebones."

Senator PASTORE. May I interrupt at this point. That is not the formula that is presently being used for depreciation when it comes to an ordinary factory. The rate of return is predicated on a depreciation that takes into account what it would cost to replace that freight car as of the costs of now, today; is that correct?

Mr. SYMES. That is right.

Senator PASTORE. Not the original purchase cost?

Mr. SYMES. And the interest is based on 6 percent of the reproduction cost, less depreciation.

I should add that in the past 10 years, during which the Pennsylvania has been a per diem debit road, we have adhered to and supported the increases which were made in the per diem rates because we believed they represented the cost of freight car ownership, even though it would have been to our selfish interest to have opposed such increases.

The committee's statement that the fundamental cause of car shortages is that it is cheaper to rent a car than to own one falls with its contrary-to-fact premise. The fundamental cause of the present level of freight car ownership is that, generally, with inadequate earnings, railroads cannot afford to buy them.

Senator SCHOEPPPEL (presiding). Mr. Symes, if that is the case, if some of the railroads are in a position to furnish the cars they need, tell me where it is equitable that those roads be expected to furnish the cars to some of the roads that cannot build them and do not want to build them?

Mr. SYMES. I don't believe that is a correct statement, Senator. I don't believe the roads are advocating this so-called incentive per diem and have any idea of acquiring additional cars because of that. They have the idea that the railroads, particularly in the East, will acquire cars with that incentive per diem so that they will really be overowned and there will be a surplus of those cars in the West during their peakloading and the rest of the time we don't need them.

Senator SCHOEPPPEL. We have been repeatedly told, and I think the facts will show, that some of these roads are furnishing newer cars and never get to use them themselves.

Mr. SYMES. I would not say that is absolutely so.

We are getting orders all the time to send cars West. As a matter of fact, right now with the grain loading starting, and as I understand they have a pretty good car supply out there at the moment—

Senator SCHOEPEL. We hope so, because we are going to be up against it.

Mr. SYMES. We are under directives of the car service division now sending a limited number of cars to the West for grain loading and we will send more if we get the order, but apparently they are getting their needs. To me that is the right way to take care of this thing in the West, and I will come to that later.

Senator SCHOEPEL. All right.

Mr. SYMES. The artificial standard of fixing compensation for car hire, as provided in these bills, would be both inequitable and impracticable. It would result in unjust enrichment of carriers that can afford to buy cars, in a burdensome penalty on those carriers which cannot afford or have no need for additional equipment, and in empty car mileage to avoid penalty car-hire costs in contravention of sound car service practices which require the fullest use of the freight car fleet. Before I get into detailed discussion to show why what I say is true, I want to give you my idea of a sound formula for freight car ownership.

Each railroad should own a sufficient number of freight cars by various types to protect the loadings it originates, taking into account foreign cars that are available for use in the strict observance of car service rules, to which practically all railroads are bound by agreement.

In this latter connection, I have in mind rule 1 of the Code of Car Service Rules which provides that home cars shall not be used for the movement of traffic beyond the limits of the home road when the use of other suitable cars is practicable.

Additionally, each railroad ownership should be sufficient to protect the short-line railroads dependent upon it for car supply.

This formula for car ownership is questioned by the railroads supporting this bill, which contend that each railroad should provide a supply of cars sufficient to enable it to perform the part of through transportation on its line if there were car-for-car interchange at its junction citing the Commission's decision in *Huerfano Coal Co. v. C. & S. E. Railroad Co.*, 28 I.C.C. 502, decided in 1913.

Seemingly, this concept met with the Senate committee's approval in its report on S. 1789. I can only say that such a concept, in the light of present transportation practices involving through routes without transfer of lading at junction points, is archaic, and I doubt that the Commission would make the same finding today. The observance of such a formula would only serve to create a car surplus and possible bankruptcy for those providing it.

To me, any formula that suggests car ownership based upon the originating carrier providing equipment to take a shipment to the junction point of a foreign road, and then the receiving line providing equipment to take it to another junction point or to final destination, is about the most theoretical and unsound proposal I have ever heard advanced in the railroad industry—and I have heard a lot of them.

Let's take, for example, a plain boxcar moving from Denver on the Burlington, going to Boston on the New Haven, with the Pennsylvania the intermediate carrier between Chicago and New York. The average turnaround time for such a car would probably be 18 days—6 days on the Burlington, 6 days on the Pennsylvania, and 6 days on the New Haven. Assuming this was a regular daily movement, it would take 18 cars to round out that movement, and each of the 3 roads should own 6 cars because of it, under the formula suggested by the railroads supporting these bills.

What hasn't the New Haven do with six cars?

It hasn't any use for them, and it can't send them empty to the Burlington because, certainly the Burlington would not accept them and pay an incentive ownership cost to the New Haven, except probably during the short period of their peak grain loading—and maybe not then.

The application of such a formula could only result in excessive ownership of freight cars to the tune of hundreds of thousands, and 100,000 freight cars today would cost a billion dollars.

There are about 2 million freight cars in this country and Canada, operating over 107 class I railroads and several hundred small ones, in addition to the Canadian lines. There are probably 200 owners of freight cars. These cars have been thrown into a general freight car pool and they are in effect automatically distributed under car service rules drawn up by the best transportation talent in the country and changed from time to time to meet changing conditions.

Where the rules themselves are not adequate to protect a particular area, these rules are modified by orders of the Car Service Division of the Association of American Railroads so that there will be a flow of cars into the loading areas where a shortage of equipment is anticipated.

When the cars get off line, the owners are reimbursed for cost of ownership plus a reasonable profit.

In other words, we have, in my opinion, the finest car distribution system in effect today that it is possible to obtain as a practicable working arrangement.

Admittedly, you can come up with other plans that sound better to the uninformed, but if you examine them and attempt to put the practicability of distribution into these theoretical assumptions, it simply does not work.

As for car shortages, to the extent that they have existed since World War II, they were not the result of an inadequate per diem rate. In fact, during this period the per diem rate has risen from \$1 to \$2.88 per car per day. (At the time of the hearing on S. 1789 the rate was \$2.75.)

The reason for any such shortage is that the railroad industry as a whole has not had sufficient earnings or adequate credit to acquire a proper number of new cars or adequately to repair the old ones.

Senator SCHOEPPPEL. I think, Mr. Symes, you are absolutely correct on that. Our analysis made during the series of railroad hearings definitely brought out the need, the necessity, for that situation somehow being remedied.

Mr. SYMES. I think, Senator, that is the answer to this whole thing, but I cover that a little later, too.

Admittedly, car shortages cause misuse of equipment and undoubtedly certain railroads with an adequate ownership for their shipper requirements are deprived of the use of cars they own.

But also, it should be observed that some of the railroads which support S. 886 and S. 1840 are themselves deficient in their car ownership in that they require more cars than they own to meet their peak loading requirements.

I have reference to the peak loading of grain where some of the originating lines require boxcars of other railroads in addition to their total ownership for this purpose. They are not meeting the test of their own car-ownership formula. And I refer specifically right now to the Santa Fe who have about 120 percent of their cars on the line, their stock out there for the grain loading.

The Burlington last August had up to 120 percent of its ownership, and I would say this, that if the eastern roads were directed—for example, at the beginning of the grain season, that usually starts this time and moves north—were directed by the car service division to send every ownership car to them, empty, as soon as it was made on our line, I would do it.

As it moves into the central part, I would do it, but by the same token I should not be directed to send our cars out there. If they have 100 percent of their line out there, we cannot do it. I agree they are entitled to what they have and not more than that, when we do not need the cars.

Even if arrangements were made to have all of the boxcar ownership of these grain-loading railroads returned to them empty for the harvest season as it progresses from Texas north, these railroads would still be deficient in meeting the requirements of their shippers, and I doubt that they would want to have to rely on themselves to meet these requirements.

Under car service orders issued by the Car Service Division of the Association of American Railroads, empty cars are made available from other lines for this purpose. And cars are gathered and held in advance for such loading in spite of shortages elsewhere.

A lot has been said about car shortages, but little, if anything, about car surpluses. Car shortages and surpluses can be coexistent, particularly taking the country as a whole.

Reference is made in the committee's report on S. 1789 to a study of the Commission that showed a need for 1,935,500 freight cars in 1956, from which the committee concluded that the existing fleet of 1,707,280 cars, as of May 1, 1959, was obviously inadequate.

But 1956, insofar as boxcars were concerned, was a year where car shortages generally exceeded car surpluses. This situation has not continued in subsequent years, where car surpluses have greatly exceeded car shortages. There is now and has been for some time a large surplus of serviceable cars, with only small isolated shortages.

For the week ended May 27, 1961, the latest for which such information is available, there was a daily average surplus for class I railroads of 45,394 cars of all types as against a daily average shortage during that week of 690 cars.

The daily average surplus of plain boxcars during that week was 23,899, which included 10,264 cars assembled for grain loading. The

daily average shortage of plain boxcars was 574, scattered all over the country.

Since my written statement was prepared and filed for the committee, I received the study as of June 3. During that week there was a daily surplus for class I railroads of 43,910 cars of all types against a daily average shortage of 721 cars.

The daily average surplus of plain boxcars during that week was 24,554 cars, which included 11,024 cars assembled in the West for grain loading. The daily average shortage of plain cars was 541, again scattered over the country.

As of June 3, the Pennsylvania had stored on its lines in serviceable condition, 2,553 boxcars for which we can't find any business.

As for incentives, we should not fool ourselves into thinking that incentive for car ownership should or would come from an unduly high per diem rate, produced by the so-called elements of compensation proposed in S. 886 and S. 1840. The only sound incentive for an adequate freight car ownership on the part of individual railroads is protection of customer requirements, attraction of new industry for future growth, and prevention of other modes of transport obtaining business because of car shortages.

They are our real incentives. In short, the incentives have to do with revenues from traffic handled and not from an artificial per diem rate. I am firmly of the opinion that while inadequate compensation may deter acquisition of new cars, more than adequate compensation is no incentive to such acquisition.

As previously stated, the adequacy of the present per diem rate is now before the Commission, and no change in the law is required for this purpose.

I would again like to cite the Pennsylvania Railroad as an example of what I am talking about. In July 1960 we completed a new car program, begun in 1959; 22,972 new freight cars were acquired at a cost of \$212 million. Financing has been through conditional sales arrangements or leasing—mostly the latter.

It was the largest car program both with respect to quantity and cost that has ever been undertaken by any railroad in such a short period of time. Our new freight car program for 1961 calls for 3,619 additional cars at a total cost of \$28.5 million; 2,193 of these cars have been completed and put into service. The incentives that I have outlined determined our thinking in going forward with these programs—not per diem.

Another example of what provides the incentive for acquiring new cars is a recent announcement of the Maine Central that it has ordered 200 new-type boxcars designed for transporting paper and 50 new pulpwood cars for the benefits of its shippers—not to obtain per diem.

I will now tell you why I believe S. 886 and S. 1840 to be inequitable. Let us take the cars that are moving from southern coalfields to Lake Erie ports for transshipment to destination. Millions of tons of coal move via these routes. In order to protect marketing requirements, the railroads grant 5 days free time on the cars held under load at the ports. Because of this arrangement the existing per diem rate eats up most of the profit of some of the lines dumping coal at these ports.

If you place a higher per diem charge on these cars, then I can assure you that, insofar as the Pennsylvania Railroad is concerned, we will be after a substantial increase in the divisions of the rates from these southern lines, which are already too low, or discourage the movement of coal through Lake Erie ports which originates on foreign lines. We just could not afford to have it.

The same is true with respect to coal at tidewater ports.

It also involves grain and other export traffic at Atlantic ports. Such traffic originating on a western road moves to Baltimore, Philadelphia, or New York. Again, because of marketing conditions, 12 days free time is allowed at these ports on grain, with an additional 3 days for inspection. On general cargo for export 7 days free time is allowed in addition to intervening Saturdays, Sundays, and holidays.

Senator PASTORE (presiding). What do you mean by free time?

Mr. SYMES. Free time, I referred to it at Lake Port. The first 5 days from the time they arrive—the first 5 days there is no demurrage, we do not charge the shipper for that, so we collect nothing, the terminating line. However, during that 5 days if it is the foreign car we pay the foreign railroad five times \$2.88 from which we collect nothing from the shipper or consignee. That is the free time we give them for unloading the equipment.

In some cases it is higher on grain, as I say it is 15 days on a lot of this export traffic.

Senator SCHOEPEL. Mr. Symes, have you found the free-time designation there generally acceptable?

Mr. SYMES. On the part of the shippers?

Senator SCHOEPEL. Yes.

Mr. SYMES. Well, I will tell you, it has been worked out, Senator, over a period of time on what we think is a fair average to permit them to accumulate cargoes for one thing and boats sometimes will come back and forth, through no fault of their own will be delayed.

Add to that, we have the average time to take care of those things and it is a marketing conditions that is required if we are going to move our grain and our coal by water through Lake Erie and Atlantic ports.

We pay per diem for all these days. Do you think the Pennsylvania should be required to pay a higher per diem rate on these western cars when we are helpless in having them released and returned to the owners?

One of two things would happen here—we would demand substantial increases in divisions to compensate us for this extra per diem charge, or we would embargo these ports for export traffic moving in foreign-line equipment.

Again, the per diem would eat up all the profit and it would be a very bad thing for the line to handle.

It is inherent in the nature of the joint service offered by all of the carriers that the time consumed in termination will be greater than time consumed on the origin and intermediate roads. These privileges induce the shipper to ship over a particular route of movement, and the benefits of these terminal provisions mutually accrue to each carrier participating in the movement. They all get the

benefit of it but the terminating lines have to bear quite a burden now on that per diem rate.

To assess upon the terminating line a charge in excess of the fair ownership cost of these cars would be to unjustly charge the terminal line a penalty for conditions which are essentially beyond its control, and are due to the fact that the origin line has given it a shipment which is subject to detention and delay despite the most diligent efforts of the terminating carrier. In such a situation it is not the terminating line's fleet which is inadequate if the origin line has a shortage while cars are backed up at the port awaiting ships. It is the origin line which has insufficient cars to take care of the transportation needs of its shippers, and this is true irrespective of whether or not the origin line shows an annual net credit in its per diem account.

Senator PASTORE. Now, is the terminating line at a disadvantage only because it must keep that car there until it loads it up before it loads up its own cars?

Mr. SYMES. In most cases, Senator, take New England, for example, they terminate, I suppose, 5 to 1—I might be off a little on that figure. They haven't any outlet for the cars, they must come west, they can't go east to the ocean, as they are made empty they immediately start them back west to the owing road.

Senator PASTORE. Sometimes they can't do it immediately because it is beyond their control.

Mr. SYMES. That's right, but as soon as they are made empty, then if they can't find a load and they can't for about four out of five of them.

Senator PASTORE. Would it help the originating lines or the western lines if some of these cars could be shipped back empty?

Mr. SYMES. They are now, sir. Right now, we have orders to send about, I think it is five orders that I know of, to send empty boxcars west through the Chicago and St. Louis gateways to protect this grain loading we are speaking of. They are in effect all the time.

Senator PASTORE. How does that conflict, or how does that not conflict, with this rule that you have to fill it up first?

Mr. SYMES. That's your first obligation. If you have a load, for example, on the New Haven going, say, to the Burlington, and you have a Burlington car, your first obligation is if you have the load you load that car; if you don't, send it home empty.

Senator PASTORE. But you can send it back empty.

Mr. SYMES. Yes, and they are going back all the time.

And in addition to that when we get into this peak grain loading, then we are ordered not only to send that car back empty but to send so many boxcars per day through Chicago or St. Louis into these grain areas.

Senator PASTORE. You are saying, in effect, that the complaint on the part of the western roads, who I understand are supporting this legislation, is not the fact that these cars are being held up; their complaint is that they want to collect more money on the per diem basis to work up this reservoir in order to get themselves new freight cars.

Mr. SYMES. I think there has been some abuse of the western cars in the peak period in the East, and they would be misused. You always find that under any set of rules.

Senator PASTORE. That is just the point; we have been debating this matter. I was one of those who insisted that we have a public hearing on this because many people who had not been heard before should be heard so no injustice would be done to anyone. Naturally, we feel that there is some basis for the complaint that is being made.

Mr. SYMES. There isn't any question.

Senator PASTORE. We don't think this is the way to reach it. In other words, don't hurt us just because you happen to be in a little bit of trouble. But now, what is the answer to this? What we are trying to find out on this committee—are you going to come to that?

Mr. SYMES. Yes.

Senator PASTORE. I was hoping something constructive could come out of these hearings so everybody could be happy.

Mr. SYMES. Also, inequities would result from the application of the proposed inflated per diem charges in instances where car service orders require the return of equipment empty to the owning line. For example, again referring to the movement of coal to the lakes, the originating roads send off line far more loaded cars than they receive. To protect their car supply there is an outstanding car service division order, known as C-411. This order provides that the coal cars of these roads must be returned empty when released on another road and not permitted to be used except under a few special conditions.

Now, that's where the car service orders come into effect. You take the N. & W., the L. & N., and the C. & O., if they did not have such an order they would be out of cars in a week because they are sending them all off line.

Senator PASTORE. Who decides that?

Mr. SYMES. It is decided by the car service division of the Association of American Railroads. These railroads loading more off, they have to come back empty, there is no load to come back, but to keep them loading and unloading they have to come back empty.

Senator PASTORE. But can you as a terminal line make that decision?

Mr. SYMES. We are ordered to do it under car service division order which we have described to you, all these railroads, it's an agreement, and any orders they issue we have described that we will live up to them. Now, it is true there are some violations of the car service rule, and there couldn't help but be with the couple of hundred million cars in this country.

Would it be fair to have an order prohibiting the use of a car, and requiring that it move to the owner empty, and then also increase the established per diem charge to the railroad thus required to move it empty? Incentive per diem to move that car empty that you are not allowed to use?

The same is true with respect to boxcars moving to western roads from eastern roads, where it is common practice for the eastern lines to receive orders to send literally trainloads of boxcars to the West empty to meet their grain loading and other requirements. Many of these western cars come to the Pennsylvania Railroad at Potomac

yard here in Washington and terminate along the eastern seaboard from here to New York and also Boston.

Then we are not permitted to load the cars but must return them empty to the Chicago, or some other western gateway point, and pay the regular per diem charge while they are on our line. Surely that per diem charge should not be increased, when as a matter of equity, we should be paid for moving the car empty in long haul in view of the short haul we receive in the loaded movement.

In other words, a western car coming through Potomac Yards, say, unloaded in Philadelphia, because of the conditions in the West we get car service orders to send cars to Chicago and St. Louis empty, and we do, maybe not that particular car, but its equivalent.

The proposed incentive per diem rate would have no relation to avoidable delay or to inefficiency. It would be payable for every day that a railroad has on its line a foreign car. If the railroad used such a car to the maximum possible extent for 10 days, it would pay exactly the same per diem as another railroad which used a foreign car for 1 day and then let it stand idle and empty for 9 days. Such a per diem charge, insofar as it would penalize, would penalize use and nonuse, efficient and inefficient use, unavoidable and avoidable delays, alike.

One can go on and on citing inequities that would happen all over the country with a per diem rate higher than the true cost of ownership.

I testified regarding these inequities that would result from the enactment of this kind of bill in my appearance in 1959 before this subcommittee. In its report, the Senate committee commented on this testimony to the effect that terminating railroads would not be penalized by higher per diem charges resulting from delays for which they are not responsible because such charges would be offset, and in some instances more than offset, by higher demurrage charges which accrue to the terminating lines. With all due respect to the Senators who submitted that report, may I point out that the Pennsylvania Railroad's yearly net debit on account of freight car per diem, under the rates as have existed, far exceeds its yearly revenue from demurrage. In 1960, our per diem net debit for freight cars was over four times as much as our demurrage revenue.

The committee failed to take into account how demurrage applies. On grain cars, to which I have referred, there is 15 days free time. After that there is a storage charge in lieu of demurrage for grain held in cars which is considerably less than half of the per diem rate. In contrast, the full per diem rate applies during the entire period, including the 15 days for which no charge at all against the shipper is applied which I referred to before.

The committee also ignored the amount of free time which is accorded to coal to the lakes and to the tidewater ports and to export traffic generally. Because of free time and average agreements with the shippers, there is little, if any, demurrage on lake and tidewater coal.

The average agreement, Senator, is this: We take coal, for example, we usually divide it up in two zones, starts about the 1st of April and ends about the middle of November, on account of the weather.

August 1 is the breakoff point. If a car is delayed 10 days, which it might be, another car moves in there and is dumped in 1 day, make

it 9 days, 9 days and 1 day, that would make it 10 days, they would average the thing out that that car would be 5 days, 2 cars, 1 to 1, 1 to 9; then you close at the end of the period and start another one. Actually with that practice, and they need it, there is practically never any demurrage paid on the coal.

Even under ordinary demurrage where there are 2 days of free time, with some additional free time on account of Saturdays and Sundays, there are average agreements between the railroads and the shippers which materially reduce demurrage revenues.

The Senate committee report also suggested that the inequities to which I refer could be overcome by a so-called per diem reclaim under which "a line-haul carrier bears all or part of the per diem charges which otherwise would be borne by a short-haul terminating railroad." The short-haul terminating railroads own little or no equipment and if the committee's reasoning is meant to apply to line-haul terminating carriers, such as the Pennsylvania, it displays an inconsistency of thinking, for the application of a reclaim would defeat the very objective which the proposed legislation purports to accomplish, namely, higher per diem as an incentive for car acquisition.

The Senate committee further suggested, as a means of protecting against inequities, the application of a so-called average per diem plan, effective in the middle thirties, under which boxcar owners accepted substantially less than the established per diem charges, on an average related to more normal conditions in the interest of more efficient transportation, and in an effort to avoid excessive empty car movements. This suggestion is completely unrealistic in view of the opposition to the average per diem plan by the very railroads which are supporting the proposed legislation.

The fundamental objection to a per diem rate in excess of the true cost of ownership is that it would add substantially to transportation costs because of increasing empty car mileage. The so-called per diem urge would cause railroads to send foreign cars home in order to save per diem payments, and at the same time send their own cars offline to earn per diem payment. This practice would definitely increase empty car mileage and add to any existing car shortage. The best way to obtain maximum use of freight cars is to increase loaded car mileage and reduce empty car mileage. What is proposed in S. 886 and S. 1840 is directly opposite to that philosophy and would result in wasteful transportation. What is needed is additional loaded car miles, which can be accomplished with a more efficient use of the present car fleet. This would be a step in the right direction and, in my opinion, would materially relieve any car shortage situation.

In other words, our goal is to get instead of 70 percent loaded mileage, 72 or 73. That is one of the goals, naturally, but there is the big field.

You are concerned with the possibility of a car shortage and how to deal with it. I realize that the possibility of a car shortage may be expected with a substantial upturn in our economy, but I think the problem is more long-range than immediate. Certainly, the situation today is not the same as that before the Senate committee in 1959. I am not trying to discount the fears that have been expressed, but I do think that the whole matter is one which should not be considered pre-

capitately. Bills of the nature of S. 886 and S. 1840 have been considered a number of times during the past few years. Fortunately for the railroad industry, and also for the country, they were not enacted.

With the present level of our economy, there is no immediate freight car problem. But, I do not want to leave you with the thought that there is no problem at all in this area. The fact of the matter is that the railroads should be acquiring during the next 10 years on the average from two to three times as much equipment as they have installed in the last 10 years. I am convinced that our economy is growing in spite of the present temporary setback, and that the needs of our economy and the more critical requirements of national defense will not be met unless our industry can begin a greatly accelerated equipment program within the near future.

As I have already pointed out, this necessary increase in our new equipment program will be retarded rather than assisted by any system based on the theory of compulsion through excessive per diem rates. The basic cause of the problem is not an arbitrary lack of cooperation by certain railroads or a selfish desire on their part to refrain from spending available funds on modernizing and increasing their equipment. As I have already indicated, the cause is much simpler—the inability of certain segments in the railroad industry to obtain sufficient funds for these purposes.

No amount of penalties or so-called incentives can eliminate the harsh realities of that situation and stimulate any railroad into spending money which it simply cannot obtain. What is needed is a new reservoir of capital to make it possible for all railroads to meet the continually increasing needs of the Nation for economical rail transportation. Less than half of the true needs for new railroad equipment can be met by existing sources. This can be briefly demonstrated by considering some financial facts.

The railroad industry should be acquiring each year new equipment of a minimum value of \$1.5 billion to take care of obsolescence and provide the special equipment now in demand.

When I say special equipment, as an example, Trucktrain alone which is the company which used these flatcars upon which these move, so-called piggyback equipment, it is owned by 30 or 31 railroads, they have acquired in the past few years 7,200 of those cars. They are \$91 million in debt right now in having acquired them. That was the cost of it and that is still what they owe. That is private equipment.

Now, what does that have to do with a boxcar? Simply this, with Trucktrain having 7,200, I would guess there are 10,000 such cars in the country and I would also estimate that those 10,000 big flatcars, most of them 85 feet long, are handling what is generally formerly boxcar traffic, some perishable refrigerating, it would take about 50,000 boxcars to move the volume of traffic that is now moving in this new method of transportation.

Naturally, you are going to have the decreases in ownership that we see, but it's nothing to get excited about in my opinion. In fact, I heard the ICC testimony yesterday the seriousness in this big cut in car ownership as compared with what it was compared with 1950, 1956, and so on. It hasn't decreased as much as the decline of traffic, so there is nothing there to get alarmed about. Our ownership is still

greater percentage-wise than the fall off in traffic. I mean the decreases are less.

As I say, this represents, this billion and a half of new equipment—substantially twice the amount of funds which the industry has been able to devote to these purposes in the past. This means that, to accomplish the desired program, the railroads would have to find approximately \$300 million each year of internal funds and to uncover private sources for lending at the rate of about \$1.2 billion a year.

With a large segment of the industry experiencing at the present time a very unsatisfactory working capital position and wholly inadequate net earnings, the required new internal funds are simply not available. Furthermore, our experience indicates quite clearly that conventional private financing sources for railroad equipment simply do not exist to the extent of providing \$1 billion to \$1.5 billion annually.

If the railroads run into a serious car shortage, it will be for two reasons. First, they haven't the money or credit to acquire the new equipment needed and, second, they don't have the money to repair the 75,000 shop cars now over and above normal—and, incidentally, most of those cars are in eastern territory. To return the shop cars to normal would cost over \$100 million and would require 20,000 additional employees for a period of 6 months to get us down to normal.

The eastern district roads are now in the red \$75 million for the first quarter of this year, and the second quarter is going to add another \$50 million to that figure. In 1960 these railroads combined had a deficit of \$25 million. So-called incentive per diem will not help this situation—it will make it worse. Such a per diem is not going to provide any more dollars in the industry—it would merely take from one railroad and give it to another. We need more dollars in the industry if we are going to acquire and repair freight cars to take care of peak movements. And today we just don't have the dollars. Instead, the eastern district railroads have a working capital deficit.

Senator PASTORE. You haven't said it here, but would it be fair to say that, on the basis of this philosophy you have expressed, you would be taking it from one railroad and giving it to another, you would be taking it, in fact, from the railroads that are even more depressed and giving it to the railroads that are not as depressed?

Mr. SYMES. When you were out I did cover that, Senator—very much so. It's in the statement.

Speaking for the eastern roads generally, it is clear that the Federal Government must cooperate directly in helping the railroads to obtain the amount of financing that will be needed to accomplish the equipment program over the next 10 years. The eastern railroads have proposed a plan which would meet the problem in a simple and practical manner without cost of any kind to the Federal Government. I refer to the proposal for establishing a Federal equipment agency to buy railroad cars and locomotives and lease them to the railroads at rental rates sufficient to make the agency entirely self-supporting. Such a plan is embodied in a bill now pending in the House and designated H.R. 2078.

New Government agency would be established with initial capital of \$500 million and the right to borrow \$2 billion additional, making

a total of \$21½ billion available to the railroad industry for equipment. Requests for new equipment from individual railroads would be approved by the Interstate Commerce Commission and orders placed for construction of the equipment through the usual commercial channels. The equipment would be acquired by the agency and leased to individual railroads at a rental which would be sufficient to pay back the Government agency the cost involved and provide a profit, so that even the original capital eventually would be returned to the Government.

Senator PASTORE. I want to be facetious for the moment. Why do we have socialism?

Mr. SYMES. It isn't, this is not subsidy.

Senator PASTORE. I don't think so, either. But when the Government gets into something, certain people in this country, and some of them are connected with the railroad industry, say that's socialistic.

Mr. SYMES. \$50 billion that are poured into our competition as subsidy since 1955 and expect us to compete with it. That is not a subsidy, this is a payback that I refer to.

Senator PASTORE. All right.

Mr. SYMES. At the end of the lease term for new equipment the governmental body having control over the stockpile of strategic materials for national defense purposes shall have the option of purchasing the equipment it desires from the transportation agency at the fair value of the equipment at that time. Any equipment not thus purchased for stockpiling for defense purposes shall be sold for scrap by the transportation agency with the proceeds recaptured by the transportation agency. And that is really the residual value which would go back to the Government and not the railroads.

In my judgment this program would meet the real equipment problem in the railroad industry. Additional private capital sources not available to the railroads would be opened up, but there would be no disruption of existing railroad capital sources for those companies desiring to finance equipment purchases by conventional means or requiring private capital for additions and improvements other than equipment.

Furthermore, the plan also avoids unnecessary distortion in other phases of railroad financing. It does this because it would operate on an entirely voluntary basis. There are a good number of railroads which can and would want to continue to finance their equipment purchases by conventional means. Such companies would not be required to deal with the Federal agency. In addition, there are railroads which can finance a part of their equipment needs by conventional means and would only use the agency to the extent that these conventional means are inadequate. There are, however, certain railroads which may have difficulty in obtaining any private financing, and these companies would be enabled to play their part in the overall program by acquiring all of their equipment needs through the Federal agency. Finally, all of this would be accomplished without ultimate expense to the Federal Government since the plan contemplates that the agency would be fully self-supporting. In addition it would be building up a supply to meet emergencies which we don't now have if we ever get into that situation.

This plan of the eastern railroads is not only the best tailored solution to the problem, but, in my judgment, it represents the only effective type of solution. A substantial amount of additional private capital cannot be uncovered under present circumstances. There is a practical limit to the amount of private capital which can be invested in railroad equipment, and this is true entirely apart from any matter of interest rates. Furthermore, there are certain segments of the railroad industry which will find it difficult to obtain any private capital sources under present conditions.

With the railroads able to acquire new equipment through the means that I have described, coupled with proper observance by them of the car service rules and the car service orders of the car service division of the AAR, there should be no inadequacy in the national freight car supply. This, I submit, is the manner in which this problem should be approached, rather than by the means of an unrealistic artificial stimulus in the form of a penalty which would defeat rather than attain the desired objective.

That completes my statement. Thank you very much.

Senator PASTORE. Did you say your plan was before the Congress?

Mr. SYMES. It was up on two different occasions. They had hearings on it, I think it was 3 years ago, and there were also some hearings in the Senate, but it didn't move out of the committees.

Senator PASTORE. And how long has it been kicking around?

Mr. SYMES. I believe it is 3 years. It was reintroduced this year. It might be four, Senator, but I think it is three.

Senator PASTORE. Is that bill generally supported by all the railroads?

Mr. SYMES. No, it had the entire endorsement of the eastern railroads and some of the western and southern railroads—well, their idea was they weren't going to take any position; but it did have the united support of the East.

Senator PASTORE. Any questions, Senator?

Senator SCHOEPEL. Mr. Symes, you pointed out here about your new car program, which is certainly commendable. During that period of time how many cars, overall, were retired from service by your railroad?

Mr. SYMES. I would say the 23,500 additional we put in we probably retired 28 to 30—more than we put in.

Senator SCHOEPEL. I see.

Mr. SYMES. We did. However, one thing that we overlook in a lot of our looking straight at cars, is the increased capacity and things we are putting in these cars in the way of greater length, sides on gondolas, 50-foot boxcars compared to 40.

For example, in our railroad, going back to 1939, as I remember the figures—to 1946, we were and still are the largest gondola ownership in the country, steel, and we increased or decreased our fleet by about 7,000, but at the same time we increased our fleet around 10,000, and as you took the increased carrying capacity, through the longer cars and higher sides, and increased carrying capacity because of heavier trucks, it was the equivalent of 7,000 cars—it was a 20 percent greater carrying and cubical capacity car.

The next thing, are you getting it into the car, and much to my amazement we were getting 22 percent greater load, so it was working out better.

Senator SCHOEPPPEL. Mr. Symes, isn't it a fair statement to say that some of the railroads over a period of time here have increased their fleet of boxcars by a pretty fair percentage and also their total ownership of freight cars by a good fair, substantial percentage; and isn't it true that some of these roads have held their bad order cars to a very low minimum?

Mr. SYMES. Oh, they have; yes, sir.

Senator SCHOEPPPEL. Now doesn't that just seem to point up this, that there are some of these roads that are carrying an unusually higher load that they are not getting very much benefit out of. Now how are we going to correct a situation like that?

Mr. SYMES. I think I could also use the Pennsylvania there as a good example, and we are one of the big ones in that respect. We have substantially reduced our ownership and we have had a terrific bad order situation. Right now 19 percent of all the cars we own are bad order today, yet, we still have a serviceable ownership that is much beyond our needs; we have cars stored good order. We can be criticized for reducing our ownership and we can be criticized for the cars going up. Where would I have the money to buy the cars and repair them when I have serviceable cars laying around and still in the red? You have to take all of those factors into account.

As I say, the boxcar is moving out of this picture and is going to move out pretty rapidly and is something we are going to have to think about for the grain people because piggyback is moving in here and replacing boxcars and is going to continue, in my opinion, in a very rapid way, but the business will fluctuate between the roads.

Take us, for example, steel; 30 percent of our freight revenue on the Pennsylvania Railroad comes from steel or the raw materials that go into it, and in dollars that is about \$240 million. Now steel goes down to 40 percent, or, say, 50 percent of capacity, and what happens? \$120 million of our revenue is pulled right out from under us, we store these hopper cars and gondolas. We haven't got the money to repair them, it would be crazy to repair them when we won't need them, so it is a serious situation.

Senator SCHOEPPPEL. I can see, I know there are those who would say there is no justification for some of the railroads in the western division to be alarmed about this situation. But trying to look at it as impartially as I can, it seems to me that some of these roads are maintaining an adequate supply of cars and a low bad order situation and are completely out of line with what would be fair and equitable in the overall picture, so they do have a grievance.

Mr. SYMES. On the principle of ownership agreed to by most of the railroads, the origin railroad, no matter how many cars, should provide himself with the number of serviceable cars to meet his peak loading. He is reimbursed for his ownership, plus a reasonable profit. That to me is the sound ownership formula. I couldn't justify repairing cars when I am \$2 or \$3 million in the red now.

We are running out of cash now, the eastern district roads, as I say are \$100 million minus in their net working capital now; it is more than that. How could they go out and meet cars?

Senator PASTORE. Our staff member has certain questions, Mr. Symes, to complete the record.

Mr. GRINSTEIN. The Chairman of the ICC, Mr. Hutchinson, yesterday said that the national ownership of freight cars had declined to a perilously low level. Would you agree or disagree with that?

Mr. SYMES. I would say it is not a low level compared with the amount of business we have when we have cars stored in good order. I will not make an exception to his premise that looking longer range we are going to need cars. As I also said, there are 75,000 freight cars in the country today over and above normal that are shopped. If there is a sudden upsurge in the business that is the first reservoir we are going into, repair those cars and get them into service.

Mr. GRINSTEIN. In other words, at the present time the national freight car ownership is not at a perilously low level, though you believe it may occur at some future date?

Mr. SYMES. And in addition we need cars for obsolescence that is taking place; we also need, as I say, these so-called special type cars, such as the piggyback cars and bigger boxcars and double end and end doors, and all that. It is the special equipment that we really need.

But let's again go back to the Commission in 1956 when they said we should have—we did have some shortages in 1956—but we should have, I think it was 190,000 more cars. I can only say that thank goodness, we didn't pay any attention to them, if we had acquired that many at a cost of \$102 billion they would have been setting idle here for the last year.

Mr. GRINSTEIN. In other words, back in 1956 there was a—

Mr. SYMES. That is the last year that we have really had any—and it was pretty serious in 1956, but not since, it has been scattered.

Mr. GRINSTEIN. In your statement you challenge the statement that has been made in connection with this legislation that it is cheaper for a railroad to rent a car than to own one.

The origin of that statement, if I understand it correctly, is that the per diem at the present time is \$2.88; however, a loaded car can earn between \$18 and \$20 a day.

Mr. SYMES. That is correct; well, it is about correct, it is somewhere between 16 and 19.

Mr. GRINSTEIN. So that rather than looking at the costs of ownership plus some fair compensation for profit, the proponents of this legislation say that a railroad can earn more than it costs him to rent the car and consequently it is desirable for him to keep this car on his own road rather than return it to him?

Mr. SYMES. I think the present distribution of ordering these cars back when they are needed, I am sure that this same group of western roads, if you were going to say we are going to keep 115 percent of the cars on your railroad out the year around, would have a fit. They only want them when it is peak loading. They want them running around over the East here earning per diem.

Now, going further, in my opinion, I don't mean this critically, it is a scheme that has been cooked up by the western grain railroads, and properly so, they have to look after their interests, to put a high per diem rate in, so-called incentive, in the hope that the eastern roads:

will acquire a lot of boxcars, that they don't need, which will furnish a pool for their grain loading when they need it, and it looks to me like the ICC has fallen for that philosophy hook, line, and sinker, and it just wouldn't work.

Mr. GRINSTEIN. I have no further questions.

Senator PASTORE. Thank you very much, Mr. Symes.

Senator SCHOEPEL. I would like to ask one final question.

I listened to the proposal that you are repeating here, some time back—

Mr. SYMES. That was about 3 years ago before your committee.

Senator SCHOEPEL. That is right. Now, if your proposal for a new Government agency to buy cars were adopted would the existing per diem rate be high enough to pay the rent on a leased car on an off line?

Mr. SYMES. It would be much more so. I will just give you an example, about the leasing, and you can't get any more, but we did get some.

Back in 19—Senator Pastore, I think you will be interested in this, it is a very important one—back in 1950, we, when I say "we," I mean the Pennsylvania Railroad, leased 10,000 freight cars from the Equitable Life Insurance Society, the cost of the cars was somewhere around \$57 million to \$60 million. The rental for the cars was \$1.60 per car per day, and that rental rate scaled down in each 3-year period until it will reach 20 cents per car per day at the expiration of the lease in 1965. After that we have the right to continue the lease for another 10 years at a per diem rate of 20 cents per car per day under our payment to them.

Right now we are paying 94 cents per car per day on these 10,000 cars, when they get off our line we get \$2.88. Of course, we handle the repairs of the car at our expense, and we have very good records on these 10,000. The average cost of car repairs for the last 5 years was 26.6 per day, although last year it was 46.4, it is getting a little older. If you add the rental of 94 cents per day to the 46.4, it amounts to \$1.40. So here is what we find. We leased cars from an insurance company and pay a daily rental which over a 15-year period pays for the entire cost of the cars, plus a profit, because they are not in business for nothing, of that daily rental, plus car repairs, which is our true cost of ownership, and in this particular instance it is less than half of the present established per diem rate, it's \$1.40 against \$2.88.

During the first 9 years of this lease which we have had, 10,000 cars, our rental and repair costs were \$24 million less than the established per diem rate during that time, assuming that it was \$1.88 or \$2.75 during that period of time; and that has gone on.

I would answer you very definitely, yes, the car rental rate would more than make them work if worked out on a proper formula.

Mr. GRINSTEIN. On page 13 of your statement you said,

I am firmly of the opinion that while inadequate compensation may deter acquisition of new cars, more than adequate compensation is no incentive to such acquisition.

Presumably then—

Mr. SYMES. I think if you got less than your true cost of ownership you couldn't go before your board of directors and justify buying cars, but if you are getting the full cost you can. If you get over and above

that I don't think it is going to be any further incentive. You get into need, certainly they are not going to give you a go sign if you can tell them that we are going to lose money after buying these cars if they get off line.

Mr. GRINSTEIN. Then it is your opinion that adequate compensation would be defined in terms of cost plus—

Mr. SYMES. Adequate compensation which I say is true cost plus a reasonable—and those other incentives, though, should go in your ownership.

Mr. GRINSTEIN. Thank you.

Senator PASTORE. All right, Mr. Symes, thank you very, very much.

Mr. SYMES. Thank you very much, gentleman, for the opportunity to appear. I appreciate it greatly.

Senator PASTORE. Our next witness is Mr. Patrick B. McGinnis, president of the Boston & Maine Railroad, Boston, Mass.

STATEMENT OF PATRICK B. MCGINNIS, PRESIDENT OF BOSTON & MAINE RAILROAD, BOSTON, MASS.

Senator SCHOEPEL. Mr. Chairman, might I say for the record that Senator Cotton desired to be here to hear Mr. McGinnis, but having two committee assignments, he has a responsible position of going forward on some matters which prevent him from being here when you testify. He wanted very much to do that.

Mr. MCGINNIS. Thank you very much, Senator.

Senator PASTORE. Let me say for the record, even though we are of different political philosophies, Senator Pastore will protect Mr. Cotton's interest here this morning.

Mr. MCGINNIS. I am sure he will.

I am Patrick B. McGinnis, president of the Boston & Maine Railroad. I would like to express my appreciation for the time and consideration which you so generously extend in hearing our reasons why Senate bill 886 will not ameliorate car shortages but will merely impose ruinous costs on the roads serving New England.

I have discussed this matter with George Alpert, president of the New York, New Haven & Hartford Railroad, and am authorized to speak for that railroad as well as, of course, the Boston & Maine Railroad.

We believe S. 886 and S. 1840 will not accomplish their stated objectives because their objectives are contrary to the basic characteristics of the fully integrated rail transportation system in the United States. Primarily these bills seek to provide a measure of regulation as to car ownership, supply, and distribution.

At this point rather than repeating what Mr. Symes said, I would rather, for the record, say that the Boston & Maine and the New Haven subscribe to the things that Mr. Symes said in his prepared statement and particularly the recommendation of the car pool as a solution to the existing so-called freight car shortage.

I think that this committee knows by this time, I testified in previous cases, that both the Boston & Maine and New Haven are terminating short-haul railroads as distinct from our friends, the Santa Fe or the Burlington. Our average haul on the New Haven is 110 miles, on

the Boston & Maine 140 miles, as against 553 miles on the Santa Fe and a similar figure on the Burlington.

Senator PASTORE. Would you like your statement to be placed in the record, Mr. McGinnis, at any rate?

Mr. MCGINNIS. Please do.

Senator PASTORE. All right.

(The complete statement of Mr. McGinnis follows:)

STATEMENT OF PATRICK B. MCGINNIS, PRESIDENT OF BOSTON & MAINE RAILROAD, BEFORE THE SUBCOMMITTEE OF THE SENATE INTERSTATE AND FOREIGN COMMERCE COMMITTEE

I am Patrick B. McGinnis, president of the Boston & Maine Railroad. I would like to express my appreciation for the time and consideration which you so generously extend in hearing our reasons why Senate bill 886 will not ameliorate car shortages but will merely impose ruinous costs on the roads serving New England.

I have discussed this matter with George Alpert, president of the New York, New Haven & Hartford Railroad, and am authorized to speak for that railroad as well as, of course, the Boston & Maine Railroad.

We believe S. 886 and S. 1840 will not accomplish their stated objectives because their objectives are contrary to the basic characteristics of the fully integrated rail transportation system in the United States. Primarily these bills seek to provide a measure of regulation as to car ownership, supply, and distribution.

Anyone, anywhere, at any time, may load and forward a car originating on any railroad at any point in the United States to any other railroad, using one or more carriers intermediate in the route. Normally such car moves without transfer of lading until the consignee unloads the shipment. This practice is economically sound and is required by regulation. The shipper and consignee should be wholly unconcerned about who furnishes the car, who participates in the freight rate, or how intercompany transactions are completed, including freight car repairs, car rental, and claim payments.

The Boston & Maine, New Haven, and other "terminating" railroads, serve densely populated areas of consumers. They terminate far more traffic than they originate for shipment elsewhere. The Boston & Maine and New Haven terminate about three carloads to each carload of traffic which they originate for shipment off line. Therefore, they customarily have large numbers of foreign-line cars made empty on their lines, the majority of which must be sent back empty.

The backhauling of empties is a tremendous burden on interstate commerce. Therefore, ICC-approved car service rules require that each road must load foreign-line cars off line in priority to its own, whenever empty foreign-line cars are available—and they are always available on the terminal lines because of the predominantly terminal nature of their traffic.

Terminating railroads (such as the Boston & Maine and the New Haven railroads) therefore, by the nature of their traffic, are preventing practically from ever becoming large car owners. They are condemned to being a captive market for the rental of cars owned by the large traffic-originating roads.

Each railroad acquires cars to serve the needs of shippers on its lines determining the type of car needed such as boxcars, refrigerator cars, gondola cars, hopper cars, etc. Therefore, the roads which originate substantially more traffic than they terminate are inevitably large car-owning, rental-receiving roads.

Since every road acquires only the kind of cars it needs to take care of the traffic originating on its lines, many railroads are large owners of certain types of cars which can be used only for certain commodities.

Car shortages occur only as to the particular types of cars suitable for carrying the particular commodity subject to seasonal peakloadings. S. 886 and S. 1840 wholly ignore the fact that when there is a shortage of cars suitable for carrying wheat, there could be thousands of other types of cars standing idle on tracks all over the country that are not suitable for the carrying of wheat.

Thus, increasing the per diem charge, already in excess of car ownership costs, would not alleviate any seasonal shortage of cars suitable for carrying wheat.

For example, railroads which originate products of mines, using a certain type of car for their originating business (should bills S. 886 and S. 1840 be passed),

would purchase types of cars for their needs and such cars (mostly coal and hopper type) would not alleviate a shortage at the time of the grain harvest.

Thus, the increasing of the per diem charge would not bring about the results anticipated by S. 886 but, to the contrary, would increase the costs to the terminating roads (particularly the Boston & Maine and the New Haven Railroads), which cannot extricate themselves from the captive status of net per diem debtor roads, and this would be ruinous. This inevitably would require the New England roads to apply for ICC permission to charge higher tariff roads to their shippers, which could prevent New England shippers from being competitive with shippers in other parts of the United States. Such higher tariffs would have to be granted if the New England railroads were not to be forced into bankruptcy with consequent economic disaster to the heavily populated areas served by them.

I appeared before your committee during the 86th Congress in June of 1959 and made a statement in opposition to similar bills, bills then numbered S. 1789, 1811, and 1812. At that time I referred to and enclosed with my statement a copy of a special statutory court decision in the so-called per diem case which decision was favorable to the position of the Boston & Maine and the New Haven Railroads. The citation on that case is 162 Fed. Sup. 289. That decision was affirmed on appeal by the U.S. Supreme Court on November 17, 1958, and is reported in 258 U.S. 68. That case covered the very same issues as are presented by S. 886. The decision remanded the case to the ICC for further findings in the light of the Court's decision, directing the Commission in setting up a formula for per diem rental to give particular consideration to all factors, including the age of cars, the time in use, and the mileage operated. During 1960 the Commission's Bureau of Accounts conducted a nationwide study, each road submitting reports on forms established by that Bureau. Very recently, in fact by a notice dated May 23, 1961, the Commission designated an Industry Advisory Committee for the purpose of submitting to the Bureau of Accounts of the Commission its advice or views on problems arising in the course of the cost study being made by that Bureau in respect of compensation to be paid to car owners by the nonowning users.

My point in advising the committee of the present status of this litigation is to show that the matter is in litigation and will be resolved by that means and to encourage this committee to permit litigation to continue and terminate as it should.

Mr. McGINNIS. I think Mr. Symes also testified that they received four foreign cars to each foreign car originating. We are a terminating carrier and always have been and presumably always will be, and we are required to send back to the home carrier loaded, if we can, before we can use our boxcars off line.

We do have on the New Haven about 12,000 boxcars, 12,000 freight-cars and about 6,000 on the Boston & Maine, and we think that this fulfills the requirements as outlined by Mr. Symes that a railroad should take care of its shippers—considering the foreign cars we had. Yesterday I had 7,783 foreign cars on line, empty, ready to go back. The New Haven had about 13,000.

Now, maybe 25 percent of those we can fill over a period of time, most of them will go back empty. We are prepared, and we think we have taken care of our originating shippers. In our territory our two basic products, paper and potatoes, are taken care of by the New Haven and the B. & M. to protect our smaller railroads to the North.

Now, I appeared before your committee in June of 1959 and opposed similar bills, particularly S. 1789. At that time I said and referred to the litigation that was going on about per diem in an attempt to solve the per diem problem. This is distinct from the litigation mentioned by the chairman of the ICC. He mentioned yesterday a similar New Haven case—not a similar case—but the first time that the Interstate Commerce Commission ever issued an order in the history of per diem, they have reviewed orders

but the first time they issued an order was in 1946 when they introduced a penalty per diem, and at that time a fellow by the name of Toma was trustee in bankruptcy of the New Haven, he appealed the order to the courts and the Supreme Court overruled the ICC but among other things they said, as Mr. Symes mentioned, that there was no proof that additional per diem cured any car shortage. I think most of the committee is aware that in 1907 per diem was 20 cents, then it went gradually to a dollar and stayed at a dollar from 1930 until after the war, since the war it has gone from \$1 to \$2.88.

The litigation which is presently before the Interstate Commerce Commission on per diem was started by the New Haven. When the per diem rate went from \$2 to \$2.40 on August 1, 1953, the New Haven and the Boston & Maine refused to pay the \$2.40. Prior to that time all railroads, with the exception of the New York Susquehanna & Western, which is academic now because they arranged the case differently, paid the per diem without any litigation. We challenged the \$2.40 because we challenged the basis of arriving at the \$2.40. That's why we didn't pay it.

We were hauled before the ICC by the Chicago, Burlington & Quincy, who suggested to the ICC that the ICC determine that the \$2.40 was fair and equitable and reasonable. They held hearings in 1954, and the ICC examiner said that the \$2.40 was not fair and reasonable but that \$2.10 would be fair and reasonable.

In 1955, the ICC overruled the examiner and declared that the \$2.40 was just, fair, and reasonable.

The New Haven and the Boston & Maine asked for reconsideration and finally on June 16, 1956, the ICC overruled any plea for reconsideration and in effect, therefore, said that the rate of \$2.40 was just, fair, and reasonable.

We, therefore, took the ICC to court, and the method is through a 3-J statutory court, and it was in Massachusetts—Judges McCarthy, Wyzanski, and Woodbury—and these hearings with brief dates and so forth lasted 1957 and part of 1958.

On May 7, 1958, this three-judge statutory court, U.S. district court, acting as a three-judge court, overruled and annulled the order of the ICC authorizing as just and reasonable the \$2.40. Both sides took the case to the U.S. Supreme Court and on November 17, 1958, the Supreme Court upheld the decision of the three-judge statutory court. The three-judge court remanded the per diem case back to the ICC for further findings and further consideration.

The citations, incidentally, in both of these cases are in my prepared statement.

Now, in our case before the three-judge statutory court we alleged four things. We alleged, (1) that the Commission gave no consideration to mileage, that this rate was based entirely on time, every 24 hours, \$2.40. No consideration for time.

Now, in 1948, the Commission's own division declared that 70 percent of the repairs and maintenance of a boxcar are caused by traveling, not by standing still, and 45 percent of the depreciation.

The Commission ignored completely any consideration of a mileage factor. Now, curiously enough mileage was used by the railroads before we used time and they changed to time for various reasons,

but curiously enough we still use mileage and mileage only on 200,000 privately owned freight cars, tank cars, refrigerator cars; the only compensation the owners get is a mileage rate. I have to pay it and everybody else does—the potato cars from Maine travel under a mileage rate, the reefers—so we said to the three-judge court, we think mileage should be considered. The three-judge court agreed with us and directed the Commission to conduct further studies and to make further findings with respect to the introduction of the mileage factor into the calculation of per diem which at present reflects solely a time factor.

Frankly, I am reading my interpretation of what they said, but I have cited the record in case anyone challenges what the three-judge statutory court said.

Secondly, in going from \$2 to \$2.40 the examiner said it should be only \$2.10. Now, we didn't agree with the examiner, but the difference between \$2.40 and \$2.10 is that the examiner used the ledger value of the boxcars and the ICC used the reproduction value.

Now, prior, in all of the per diems up to \$2 we used, as we think we should use, the ledger value of a boxcar, not the reproduction value, new, of a boxcar. For several reasons, No. 1, it's realistic, it's an exact figure.

No. 2, because of heavier loadings and bigger boxcar the chances are a great many of these cars will never be reproduced but in order to justify the \$2.40 the general committee of the AAR introduced for the first time the element of reproduction value, new, thereby justifying the \$2.40.

Now, the three-judge statutory court rejected the Commission's utilization of estimated reproduction value, new, instead of ledger value as the basis for calculating the depreciation.

No. 3, we challenged the inclusion under repairs of cabooses and refrigerator cars and a great many other irrelevant items which added up to so many cents in figuring the per diem.

Well, last but not least, we challenged the basis of per diem. What the general committee did is they took the entire cost of the freight car fleet, and that was X; then they said, this per diem, however, must be based upon car utilization. We must leave out the surpluses, and the idle cars, and the bad order cars, and the ratio, therefore, of utilization will increase the per diem.

Now, in order to justify the \$2.40, in 1952 they used a 20-year average so that they could include the depreciation—8 years of it—therefore, the idle cars were higher; therefore, the per diem was higher because the average must be spread over the active utilization. We protested that, and the three-judge statutory court said that they reject the Commission's basis for adopting the 20-year averaging period for calculating this average cost. Of course, we also challenged the fact that the interest which we charged in order to establish a profit would be reflected.

Now, that change from ledger cost to reproduction in 1952 was \$4.5 billion. It wasn't peanuts. The three-judge court, therefore, directed this case back to the ICC, the \$2.40 is not on the books, it has been annulled and set aside.

You gentlemen recall that you passed the Bullwinkle Act years ago, after the war, in order to exempt the railroads from antitrust action

by making agreements, but you did leave the right of independent action, and that is the right that the two terminal roads were after, and we hope we will survive it.

Now, what we fear is that after this litigation that is now 8 years old, and which should terminate next year because the ICC has been working on this, 1959, 1960, and now 1961, they just authorized the formation of a seven-man advisory committee from the railroads to advise them further about this per diem thing, and we should have it in 1962.

What the Boston & Maine and New Haven fears is that the passage of this bill will circumvent a learned, an expert, final definition of per diem.

Senator PASTORE. Let's call a spade a spade, Mr. McGinnis. Isn't that really the objective of this legislation, to overrule the court decision?

Mr. MCGINNIS. In our opinion; yes, sir.

Senator PASTORE. Well, in your opinion or in everybody's opinion, that's why they are here.

Mr. MCGINNIS. Certainly in the opinion of the Boston & Maine and New Haven.

Let me show you how important that is. We refused to pay over \$2 on August 1, 1953, and we have continued to accrue the full rate on our expenses, \$2.88, we are only paying the \$2. We think we will win in the final adjudication, that these factors will be adjusted, and that the Commission will use these factors.

Now, since August 1, 1953, the New Haven as of December 31, owes \$10,550,000 of per diem they haven't paid. I, and the Boston & Maine, owe on December 31, \$6,500,000, being the difference between \$2 since August 1, 1953, as the years went by. We estimate that we will never pay the \$10,500,000 of the New Haven or the \$6,500,000 if the Commission uses these four formula items which the three-judge court directed them to use. We claim we will owe the other railroads nothing if this formula is applied.

Now, the danger in S. 886 is that this whole thing might collapse, our friends all over the United States would attach our traffic balances in every State that we have money, and the New Haven and the Boston & Maine would disappear as a financial entity. It is not pulling skeletons out of the closet; it is an actual fear.

Senator PASTORE. Let's get this in proper perspective for the purposes of the record because this, I think, is quite important.

The point that you are making here is that if the Congress of the United States passes this legislation, it may prejudice a matter that you have in litigation now with the railroads because of the fact that you have been withholding part of a per diem payment that has been requested by them. Your position has been sustained by this three-man court on your behalf, and his concerns money that is being held more or less in escrow that might be due in the event that the decision were against you.

Mr. MCGINNIS. Yes, sir.

Senator PASTORE. But money that you would not have to pay if the decision of the court was sustained?

Mr. MCGINNIS. That is right.

Senator PASTORE. Which would be wiped out, the decision of the court would be wiped out and you would owe that money and have to pay it.

Mr. MCGINNIS. That's our fear. That's our fear.

I don't want to be, Mr. Chairman, a dog in the manger—

Senator PASTORE. Another point, Mr. McGinnis. I have heard you talk about a \$2.40 figure, a \$2 figure, and a \$2.10 figure. In addition we have been saying here that the per diem is \$2.88.

Now, how do you relate the \$2.88 to these figures that you have been talking about?

Mr. MCGINNIS. The case went into litigation when the rate went from \$2 to \$2.40.

Senator PASTORE. Yes.

Mr. MCGINNIS. The three-judge statutory court annulled the order of the ICC in relation to that.

Senator PASTORE. I realize that.

Mr. MCGINNIS. Since August 1, 1953, the per diem rate went to \$2.75, and then since the last hearings before this committee it went to \$2.88.

Senator PASTORE. Now, have you been paying the \$2.88 and the \$2.75?

Mr. MCGINNIS. No, we have never paid anything over the \$2 since August 1, 1953.

Senator SCHOEPEL. What rate have you been accepting from the other railroads on your cars off of your line?

Mr. MCGINNIS. They have been paying—the deal works both ways.

Senator SCHOEPEL. Have you been accepting the \$2.88?

Mr. MCGINNIS. Oh, no.

Senator SCHOEPEL. How do you handle that?

Mr. MCGINNIS. By arrangements by letter between our comptroller and the comptroller of the other railroad, exchange of letters.

Senator PASTORE. In other words, you have been taking only what you have been paying?

Mr. MCGINNIS. That is right.

Senator PASTORE. In other words, you have been paying \$2 and you have been accepting only \$2 because you think \$2 is fair?

Mr. MCGINNIS. That is right, but because we are a debit road, our debit this year will be \$4 million and the New Haven—

Senator PASTORE. It is a book transaction?

Mr. MCGINNIS. Therefore, it mounts up.

Now, Senator, I might also tell you that we are now being sued in the New York courts by 55 railroads, attempting to attach the New Haven traffic balances and the Boston & Maine balances—right now—and if this bill, 886, should pass it would greatly encourage, in my opinion, the U.S. District Court in New York to say, your case has been weakened, and it could very well just completely disrupt these two New England systems. We relied always that the Bullwinkle Act would not allow coercion.

These western roads are now attempting to attach our traffic balances, in my opinion it is coercion, which we thought we were free from under the Bullwinkle Act. We thought we had the right of independent action until it had finally been adjudicated. We now find ourselves defending in the district court in New York our inde-

pendent action, defending our lives, as a matter of fact, because if they take our traffic balances, we are a terminal road, we will just be out of business.

Senator PASTORE. And all you have been paying is what the Supreme Court of the United States has ruled you should pay under the formula?

Mr. MCGINNIS. That is right.

Senator PASTORE. Now tell us a little bit about the financial situation of these two railroads, since I think that is quite important.

Mr. MCGINNIS. The New Haven Railroad has a net working capital deficit of about \$36 million; the Boston & Maine has a net working capital deficit of about \$8 million; the New Haven deficit for the first 4 months is larger by far than last year, and the Boston & Maine deficit is likewise large, running into the millions.

Senator PASTORE. Another thing, Mr. McGinnis, we passed a law here in the Congress of the United States which was supported by most of the railroads in the country, for which I voted and a number of Senators did and it was passed into law, where certain railroads could borrow the money from the Federal Government through the appropriation of the ICC.

Under that plan, how much money does the New Haven owe the U.S. Government?

Mr. MCGINNIS. They owe them \$23 million, and the Boston & Maine owes \$6 million. However, \$16 million of the \$23 million of the New Haven was used when I was president, and it was used to restore the New Haven Railroad after the disastrous floods of 1955.

Senator PASTORE. But you are now in debt to the U.S. Government to the tune of how much money, both on the part of the New Haven and the Boston & Maine?

Mr. MCGINNIS. \$29 million.

Senator PASTORE. \$29 million.

Now, this \$10 million that you have been talking about that you may have to pay, is this money in reserve, or is it money that will have to come out of operations?

Mr. MCGINNIS. It is a bookkeeping item, Senator. Years ago when we started this in 1953 the New Haven and the Boston & Maine had the reserve in cash; today, obviously, there is no cash reserve, it is a bookkeeping item on the liability side of the ledger.

Senator PASTORE. I want to put this in proper perspective. You say that you would owe as a debt on this transaction, because of this per diem arrangement on the part of the New Haven, how much money if the decision of the court were against you?

Mr. MCGINNIS. As of December 31, 1960, \$10,566,000; the Boston & Maine \$6,551,000.

Senator PASTORE. \$6,551,000?

Mr. MCGINNIS. That is right.

Senator PASTORE. This is money that you have not got lying around?

Mr. MCGINNIS. We do not have it.

Senator PASTORE. Besides this, the New Haven owes the U.S. Government under this loan plan how much money?

Mr. MCGINNIS. \$23 million.

Senator PASTORE. How much does the Boston & Maine owe?

Mr. MCGINNIS. \$6 million.

Senator PASTORE. In other words, if this bill passes and you have to pay this money you might have to close down your railroad?

Mr. MCGINNIS. I don't like to be panicky about it and we will find a way of not doing it but it certainly is a possibility.

Senator PASTORE. Haven't these railroads been before the legislatures of the various States where they have their lines asking for tax rebates and tax adjustments?

Mr. MCGINNIS. Yes, sir.

Senator PASTORE. Has the Boston & Maine been doing that as well?

Mr. MCGINNIS. Yes, sir.

Senator PASTORE. And so has the New Haven?

Mr. MCGINNIS. The four States—New York, Connecticut, Rhode Island, and Massachusetts—passed definitive tax relief measures adding up to \$6,250,000 annually which projected over the future will add up to about \$15 million.

The Boston & Maine participates in Massachusetts. We have similar bills in Vermont, in New Hampshire, and in Maine.

Senator PASTORE. The reason I bring out this point, is because I think it is quite important. It has been developed here that if this per diem is raised under the formula that has been suggested, that we would be doing irreparable harm to railroads that are already in a very, very bad financial condition; and if railroads are to operate for the benefit of the people who are serviced by these railroads in these localities, I think that that is a very serious consideration that has to be taken into account when we consider in the Congress of the United States this type of legislation.

Mr. MCGINNIS. Senator, may I simply qualify it, because I do not want to be spotlighted.

The condition of the Erie-Lakawanna, the Central Railroad of New Jersey, the Pennsylvania Railroad, and the New York Central, are only slightly relatively better.

Senator PASTORE. Well, I am not interested in them as much as I am in the New Haven, because that is the only railroad we can use.

Senator SCHOEPEL. I would like to ask this question: I am also interested in doing something for these railroads and I think we have demonstrated what we have tried to do in a legislative way has been helpful.

Mr. MCGINNIS. Very much so.

Senator SCHOEPEL. You do not mean to imply that this per diem charge has gotten you in all of this difficulty on your road?

Senator PASTORE. I would like to hear that question again.

Senator SCHOEPEL. I said he is not contending that this per diem charge has gotten him in this difficulty in this eastern picture.

Senator PASTORE. No, this would be another whack over the head.

Senator SCHOEPEL. I just wanted the record clear. Don't put an elephant up here beside this jackrabbit.

Mr. MCGINNIS. Senator, the debit of the New Haven Railroad of \$7 million for hire of freight cars is the second largest problem they have outside of passengers—the second largest individual problem they have outside of passengers.

The Boston & Maine likewise.

Here is the difficulty of adding on to a per diem rate. Almost every operating man will tell you that 70 percent of the cost of running a

railroad is in the terminal—the line-haul costs are about 30 percent.

Those are operating costs.

Now, we have to absorb the operating costs of a terminal railroad and then we have to add on a per diem, so we are doubly handicapped in that respect.

I was going to add here a couple of items.

When the Supreme Court wrote the opinion on November 17, 1958, they said:

In its memoranda to this Court the ICC has expressed its readiness to proceed in accordance with the terms of the remand. As a result, we find the question raised on these appeals, whether the Commission has adjudicatory jurisdiction to determine a uniform application throughout the industry or must engage in what the district court characterizes as a full-scale investigation, is prematurely presented; the Commission here recognizes that further investigation and more detailed findings will be requisite to compliance with the district court's remand. As the Commission has appropriately observed, the record now presents what is essentially called an in-term ruling.

In other words, the Supreme Court took into consideration what the ICC itself said. They are willing to do this.

I would like to say in closing that I do not want to ever be in the position of dog in the manger.

If you must pass a bill, pass it, but tell the ICC to use time, sure, but use mileage, and above all, use the cost of a car.

What did it cost new? We are paying \$2.88 for a bunch of junk 40 years old, with wooden sides, and at the same time we are paying \$2.88 for a new boxcar with roller bearings that costs today \$11,000. It does not make any sense. I would tell the ICC also that they should use the age of equipment.

Why, some of this equipment should not be getting 10 cents a day. That would be an incentive to get rid of that old piece of junk.

As Mr. Symes testified, on these equitable leases—and I have an equitable lease, I pay the same as he does—no one uses \$2.88 a day. At the end of 15 years I pay a nickel a day. And remember, over 50 percent of our boxcars are over 30 years old.

Tell the ICC to take age into consideration, and the type. There is a difference between a low-side gondola and a boxcar in cost, in condition, and everything else. Take those factors into consideration if you must pass a bill and all you will be doing really is telling them to follow the three-judge statutory court.

I said, Mr. Chairman, there are a lot of other things I could go on and emphasize.

Senator PASTORE. I have got nothing else to do until 12:30. [Laughter.]

Mr. MCGINNIS. I want to give the opposition a little time.

Senator PASTORE. They will be given all the time they need.

Mr. MCGINNIS. One other small thing.

In the opening statement of the chairman he said that this bill, 886, was supported by the National Convention or National Association of Public Utility Commissioners. That may be what the majority think, but the six public service commissions from the New England States, including Rhode Island, are unanimously opposed and were unanimously opposed to Senate 1789 and are unanimously opposed to 886.

I just want to clarify that one small point.

Mr. Symes has many times mentioned this thing.

One other thing I want to close with. Why doesn't the industry do something about this?

After your hearings or before your hearings in 1939, and I so testified, that the AAR—the Association of American Railroads—had picked a committee of six for the purpose of coming up with a per diem from the industry, and particularly in the House hearings it was brought out, why doesn't the industry do something about it?

This committee labored in 1959, and I was a member of the AAR, an alternate with Mr. Alpert, and they came up with a report on November 16, 1960, that they could not agree.

The president of the Burlington objected to it, because he objects to the fact that Mr. Symes says we should protect our originated loadings and Harry Murphy of the Burlington said, no, you must protect cars at interchange.

So, as a result, the AAR takes no position, as I understand it, on this thing. It does bring out a great many facts that I think perhaps the committee might be interested in.

Senator PASTORE. Are the dues that you pay into the organization predicated upon the size of the railroad?

Mr. MCGINNIS. Gross revenue.

However, if this will contribute anything to your deliberations—I have only one copy—I will leave it for an exhibit if you care for it.

Senator PASTORE. Yes, I suggest that you leave it, Mr. McGinnis. Anything further?

Senator SCHOEPEL. No further questions.

(The document referred to follows:)

REVISED DRAFT

(NOVEMBER 16, 1960)

AAR COMMITTEE OF SIX ON FREIGHT CAR SUPPLY AND PER DIEM

To the Board of Directors:

This committee was established pursuant to action taken at the April 24, 1959, meeting of the AAR board, authorizing the president of the AAR to appoint a committee of six, consisting of two presidents from each region "to bring in a recommended solution for the problem of achieving an adequate car supply for the industry and to consider the per diem rate in its relation thereto."

At the time of the committee's appointment, freight car ownership was on the decline. A temporary improvement in the unserviceable car situation had arrested the downward trend in serviceable ownership, but concern was felt that car supply might be found inadequate during the peak traffic season of 1959. Influenced partly by that concern, legislation had been introduced in the Congress proposing to amend the authority of the Interstate Commerce Commission or the standards provided for the Commission's guidance in fixing amounts of compensation to be paid for the use of freight cars.¹

Adequacy of freight car supply

The decline in freight car ownership referred to above began about 1 year prior to the time of this committee's appointment. It has continued month by month, and seems unlikely to be arrested in the immediate future. Car supply has been further reduced by an increase in the number of unserviceable cars,

¹ Hearings on such bills were held by both Senate and House committees in 1959. Both committees have since recommended enactment of the identical bills (S. 1789 and H.R. 7937) although neither was acted upon by the Congress prior to adjournment. These identical bills would have directed the ICC in the exercise of its existing authority to prescribe per diem charges at a level which would "provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

a trend which began with the onset of a recession in 1957. The unserviceable car situation showed some improvement in 1959, both before and after the steel strike, but in 1960 it has grown steadily worse.

TABLE 1.—*Freight cars owned and unserviceable: 1956-60, class I railroads*

Date	Ownership	Unserviceable	Percent	Serviceable
Oct. 1, 1956.....	1,703,683	70,416	4.1	1,633,267
Apr. 1, 1957.....	1,720,304	70,220	4.1	1,650,084
Oct. 1, 1957.....	1,738,940	86,073	4.9	1,652,867
Apr. 1, 1958.....	1,751,504	106,372	6.1	1,645,132
Oct. 1, 1958.....	1,737,325	145,692	8.4	1,591,633
Apr. 1, 1959.....	1,717,113	150,759	8.8	1,566,354
Oct. 1, 1959.....	1,695,267	144,040	8.5	1,551,227
Apr. 1, 1960.....	1,675,863	126,537	7.6	1,549,326
Oct. 1, 1960.....	1,668,033	148,166	8.9	1,519,867

Table 1 shows freight car ownership of class I railroads, serviceable and un-serviceable, at 6-month intervals since October 1956. It shows that serviceable ownership has declined by 113,000 cars since October 1, 1956, and by 133,000 since October 1, 1957.

Despite the decline in serviceable car ownership, car supply has generally been adequate to handle available traffic. Railroads in 1959 met two unusual surges in freight traffic—one prior to the steel strike, in June, the other following settlement of the steel strike, in late November and early December. Car requirements in 1960, which have been below earlier expectations, were met satisfactorily until the peakloading period in October when stringencies occurred in boxcar supply owing to concurrent harvest of fall crops and relocation of storage grain. The relative declines in carloadings and in car supply are compared in table 2.

TABLE 2.—*Carloadings and car ownership: 1956-60, class I railroads*

Year	Average weekly carloadings, 4-week peak (including nonrevenue freight)	Freight cars owned as of October 1	
		Total	Serviceable
1956.....	866,817	1,703,683	1,633,267
1957.....	790,918	1,738,940	1,652,867
1958.....	720,421	1,737,325	1,591,633
1959.....	743,597	1,695,267	1,551,227
1960.....	676,000	1,668,033	1,519,867
Index (1956=100)			
1956.....	100	100	100
1957.....	91	102	101
1958.....	83	102	97
1959.....	86	100	95
1960.....	78	98	93
Index (1957=100)			
1957.....	100	100	100
1958.....	91	100	96
1959.....	94	97	94
1960.....	85	96	92

As compared with 1956 when car supply was somewhat inadequate, and also with 1957 when car supply was generally more than adequate, the decline in carloadings has been greater than the decline in serviceable ownership.

This is true also with respect to each principal type of car; boxcar loadings, for example, are currently down about 18 percent from the 1956 peak, but serv-

iceable boxcar ownership is down only 8 percent. Where loadings are up, as in the case of covered hoppers, serviceable ownership is up even more. Only flatcars show a greater increase in loadings than in ownership, but this comparison is distorted by the faster turnaround resulting from growth of TOFC traffic.

Thus, serviceable ownership of each principal type of car appears adequate to take care of a substantial increase over the current level of traffic. Moreover, the unusually large percentage of unserviceable cars provides a source from which additional cars can be obtained without long delay when required to meet increased demands.

It seems clear that, with the exception of specialized types of cars, car supply is now adequate to meet current requirements, with a substantial margin available to protect any increases that may occur in the near future.

The outlook—Traffic and car requirements

Two studies of future freight car requirements were made under the committee's direction. One, based on an assumption that railroads may be called upon to handle a volume of freight traffic about equal to that of 1956, found that class I railroads would need an ownership of about 1,837,000 cars. The other survey, based on a canvass of all AAR member lines in 1959, indicated that railroads believed by reducing the number of unserviceables it would be possible to meet requirements in 1960 and 1961 with an ownership of about 1,650,000 freight cars, or 10 percent less than the number found in the study based on 1956 traffic.

In this second survey, railroads indicated an expectation that carloadings in October 1960 would be about equal to those of October 1957, and one-tenth less than those of October 1956. Thus, the second survey agreed with the first as to the relationship of cars owned to cars loaded, each being 10 percent lower in the second survey.²

It was estimated by the railroads that the unserviceable ratio, which was 8.5 percent of ownership on October 1, 1959, would be reduced to 5.3 percent of ownership by October 1, 1960, and to 4.6 percent by October 1, 1961.³ It was also estimated that freight car ownership of the class I roads will be maintained at a level slightly below 1,700,000 cars.⁴

Prospective car supply

So far as the short-range outlook is concerned, there appears to be no immediate problem of car supply that cannot be met by the existing car fleet, augmented as necessary by repair programs, including both the repair of unserviceable cars and the upgrading of nominally serviceable cars which are actually suitable for only limited use.

The effective car supply can be further augmented by increasing the efficiency of freight car utilization. Average freight train speed was 19.5 miles per hour in 1959, an increase of nearly one-fourth over the 1944 average of 15.7 miles per hour, and 22 percent above the 1947 average of 16 miles per hour. Yet freight cars are making fewer miles per day than they were in 1944 and 1947 because they are spending a smaller proportion of their time moving in trains and a larger proportion in terminals.

While many conditions which contributed to the performance records in wartime 1944 do not presently exist, progress is nevertheless being made in some areas. Average freight car capacity, for example, has increased each year and, encouraged by incentive rates, average loads are now higher than ever before. If terminal detention on the part of both shippers and carriers can be reduced, the capability of the available car supply can be substantially increased.

An increase of 1 ton in the average load per car at the 1959 rate of utilization would reduce by 60,000 cars the total car ownership required to handle a similar tonnage. One mile added to the average daily movement of freight cars would reduce ownership requirements by 44,000 cars.

Thus, it would appear that with increased maintenance and increased efficiency, the existing car fleet should prove adequate to meet such requirements as can now be foreseen. Such programs alone, however, cannot be relied upon to solve the

² The railroads were optimistic in their traffic estimates. Actually loadings in October 1960 were 12 percent below those of October 1957, and 22 percent below those of October 1956.

³ Due to reduced level of traffic it was not necessary to reduce unserviceable ratio which on Oct. 1, 1960, was 8.9 percent.

⁴ Actual ownership Oct. 1, 1960, was 1,668,033 cars.

long-range problem of maintaining an adequate car supply. In the long run, railroads must acquire a sufficient number of new, modern cars to replace wornout and obsolete equipment in order to maintain a level of ownership adequate for the available traffic and to bring about necessary qualitative improvements in the fleet.

Means of stimulating acquisition of new freight cars

The principle underlying the currently applicable formula for freight car ownership is that the primary obligation for ownership rests upon the loading railroad.⁵ The burden and risk of ownership are theoretically shared by other roads through car hire charges, and car distribution—return of cars to loading roads—is provided for through operation of the car service rules and the per diem system.

Several charges have been made against this system. First, it is contended that car hire rentals which cover average costs of freight car ownership do not provide adequate compensation for the cost of owning new, modern cars. By the same token, it is argued by some that the per diem rate should provide an incentive for acquisition or construction of additional new freight cars, and that a sufficient incentive is not provided by a per diem rate based on average costs, which gives no weight to "value of use" and inadequate weight (in their opinion) to the "risks" of ownership.⁶

Second, it is contended that the car service and per diem system, while successful in achieving automatic car distribution in normal times, has fallen down in periods of car shortage. In such periods, even if equitable car distribution between railroads can be maintained, originating railroads look upon ordinary per diem charges as inadequate not only from the standpoint of cost of ownership but also from the standpoint of revenue losses associated with car shortage.

The Committee of Six has considered various proposals for modification of the present system, including—

1. A proposed separate and higher per diem rate for new cars to cover full ownership costs including a fair return after income taxes.
2. A proposal to penalize railroads for infractions of car service rules.
3. A proposal to provide increased compensation to car owners by requiring, in addition to per diem, a payment to the owner of a fixed or variable charge per revenue load.
4. A proposal to base car ownership requirements on ton-miles of freight handled, or some other measure of car use, rather than on loads originated.
5. A proposal to base car hire payments on both time and mileage, rather than on time alone.

Each of these proposals, in the opinion of the majority of this committee, has some merit, but most of them are considered either impractical or irrelevant to the committee's assignment. For example, settlement of car rentals

⁵ This principle is challenged by a substantial number of major railroads.

⁶ The freight car per diem rate, since 1920, has been based upon studies of average ownership costs, including cost of repairs, depreciation, taxes, interest, and other miscellaneous costs incident to ownership, as set forth by the McCrea Commission in its 1909 report. On the basis of a study of ownership costs in the year 1918, the per diem rate was fixed at 90 cents effective Mar. 1, 1920; then was raised to \$1 on Nov. 1, 1920, because of rising wage rates and prices in that year. The rate remained at \$1 until Jan. 31, 1945, and has since been increased as follows:

From \$1 to—	<i>Effective</i>
\$1.15-----	Feb. 1, 1945.
\$1.25-----	June 1, 1947.
\$1.50-----	Sept. 1, 1947.
\$1.75-----	Nov. 1, 1949.
\$2.00-----	May 1, 1952.
\$2.40-----	Aug. 1, 1953.
\$2.75-----	Jan. 1, 1957.
\$2.88-----	Dec. 1, 1959.

The rate of \$2.88 was based on car ownership costs for the year 1958, adjusted to wage and price levels of early 1959 and to payroll tax rates in effect subsequent to June 1, 1959.

Thus, the per diem rate has been increased by 188 percent since January 1945. Freight car values, as measured by the indices of the Bureau of Valuation, ICC, were 141 percent higher in 1959 than in 1944 and 1945.

Actual cost of new freight cars, owing to new and expensive appliances, has increased more than has the index. Cars purchased in 1959 averaged \$10,319 per car, an increase of 235 percent over the 1945 average of \$3,079, and 244 percent over 1944.

Since 1945, the Interstate Commerce Commission has authorized general freight rate increases which cumulatively averaged 114 percent above the level which existed in 1945. The average revenue received by the railroads for hauling a ton of freight 1 mile has increased by 47 percent.

on a combined time and mileage basis would result in a redistribution of the ownership cost burden, but would not provide any more incentive to acquire cars than does the straight per diem system. Whatever merits the plan may have, it does not provide a means of insuring an adequate car supply.

Similarly, the suggestion that car ownership should be based on some new measure of car use, such as ton-miles or car-miles, rather than carloadings, would cause a radical change in prior concepts of ownership needs of individual roads and would require new methods for distribution of cars among railroads. The adoption of such a formula, however, would provide no new incentive to build cars, nor would it insure an adequate supply.

The proposal to supplement the per diem system with a loading charge, payable to the car owner, could make car ownership more rewarding, but many railroads would object to a plan which would add further payments on top of the established per diem rate. Furthermore, this kind of plan, in theory, would encourage the loading of system cars off line and would discourage the loading of foreign cars, and thus tend to create costly empty car mileage, particularly in times of car surplus.

Proposals to invoke penalties for violations of car service rules have been made in the past, and have been dropped after study. One such plan was tested for a short period before World War I but was found unworkable. The committee believes that a firm determination within the industry to observe car service rules can be more successful than any system of penalties for violation of the rules.

The proposal of an incentive per diem rate, applicable to new cars for a fixed number of years, would appear to provide an added incentive to install new cars, although it would not automatically insure an adequate car supply. The committee believes that the idea of an incentive rate for new cars—possibly broadened to provide a special rate also for cars classified as “rebuilt” under accounting and interchange rules—deserves further consideration as a means of overcoming the alleged inadequacy of a rate based on average ownership costs.

Conclusion

This committee has reached the conclusion that the best means of attaining and maintaining an adequate car supply is (1) firm adherence to the principle that the originating railroad has the primary obligation of car ownership, subject to such arrangements as may be made between railroads on particular traffic movements, coupled with (2) an equally firm determination that car service rules shall be observed. Since per diem charges are a factor, the matter of incentive rates should be referred to appropriate committees for further consideration.

The existing car service and per diem rules are the result of many years of practical experience. They have been brought to their present state of development by the best talent available in the transportation field. They provide the advantages of a car pool while avoiding its disadvantages, minimizing empty car mileage but requiring return of cars to owners. They should be observed.

The committee believes that, with the ownership obligation clearly fixed and a reasonably prompt return of cars assured by car service rules' observance, prospective freight revenue will provide the needed incentive for originating roads to maintain an adequate car supply. Similarly, while terminating roads and overhead roads have both the right and the obligation to load foreign cars in accordance with car service rules, they have an obligation to own cars to take care of originated traffic which cannot be loaded in foreign cars in accordance with the rules. Adequate policing of the rules would focus attention on such obligations.

Analysis of freight car supply in the postwar years shows that the shortages which have actually occurred have generally been associated with peak demands. Surpluses in the off-peak periods have been far greater than the peak-period shortages, and those surpluses have been one of the industry's most serious economic problems.

The fact that some railroads do not own sufficient cars to meet peak demands is due in large measure to lack of earnings and lack of credit. A higher per diem rate on new cars, if found practicable, might make the acquisition of new and modern cars a more attractive investment. However, despite the contrary views of some railroads, the committee does not believe that a general per diem rate substantially in excess of cost of ownership would alleviate the problem of such railroads nor would it insure an adequate car supply.

Attention should be directed to the fundamental causes of financial difficulty in the railroad industry—inequality of treatment, subsidy of competition, and overregulation. Many railroads could benefit from authorization by the Congress of a faster writeoff of railroad rolling stock for tax purposes, through employment of a construction reserve plan and a shortening of assumed service lives.

Assistance is also needed by railroads whose cash resources are insufficient to make the downpayment on equipment acquired under conventional methods of financing. Car-leasing plans provide a means for such railroads to acquire cars, provided terms can be made economically attractive.

A number of railroads believe that a Government leasing plan for railroad equipment on a full payback basis would be effective in substantially increasing freight car ownership. Many other railroads believe that this is not a proper function of Government and doubt its effectiveness in increasing freight car ownership. Because of the divergent viewpoint, consideration of the plan and recommendations in connection therewith have not been undertaken by the committee.

Recommendations

Based on its conclusions as outlined above, your committee makes the following recommendations:

1. That all railroads be called upon as car demands increase to intensify their freight car efficiency programs, specifically:

(a) To increase the serviceability of the freight car fleet by prompt repair of defects, maximum expansion of upgrading programs, and avoidance of freight car contamination or damage.

(b) To increase the utilization of freight car capacity through heavier loading of both carload and LCL freight, including nonrevenue freight. Rate incentives can be influential in such loading.

(c) To reduce empty mileage, by observing car service rules, avoiding empty crosshauls, and maintaining adequate commodity inspection and carding of empty cars.

(d) To reduce terminal delays by insuring:

Prompt loading and unloading of both carload and LCL freight.

Prompt billing of outbound cars.

Adequate switching service, including industrial tracks, interchange tracks, repair tracks, freight houses, and classification yards.

Avoidance of excessive holding of cars for prospective loading.

Maximum preclassification and advance blocking.

Prompt dispatch of both loaded and empty cars.

(e) To solicit cooperation of shippers and receivers in all phases of car efficiency.

2. That each railroad review its freight car ownership needs in the light of strict observance of car service rules and special car orders, and place orders promptly for sufficient cars to insure the maintenance of an adequate ownership.

3. That the feasibility of a separate and higher per diem rate applicable to new cars be referred to standing committees of the AAR for further study.

4. That the industry continue actively to support legislative proposals which would improve the ability of the railroads to acquire additional freight cars, including—

(a) The construction reserve plan.

(b) Faster writeoff for tax purposes, i.e., 15-year life for equipment and 20-year life for other depreciable property.

Senator PASTORE. Is Mr. Martin here?

Mr. MARTIN. Yes, I am.

Senator PASTORE. How long will your presentation be, Mr. Martin?

Mr. MARTIN. I think I can get out in 25 minutes.

Senator PASTORE. I don't want to push you, I was just asking you so we could get our calendar in proper shape. I think the committee ought to go on until we are all finished. Would you prefer to have all of your testimony and your questioning take place at the same time?

Mr. MARTIN. Yes, I would; and I think that I can even, including some questions, get you out of here by 12:30.

Senator PASTORE. Let me ask you this: Would you prefer to go on at 2 o'clock or would you prefer to go on now?

Mr. MARTIN. Now, sir.

Senator PASTORE. All right, sir, go on now.

A VOICE. I have one witness who follows Mr. Martin. I would be glad to enter his statement in the record, if that is agreeable to the committee.

Senator PASTORE. I don't want to deny you or your witness any opportunity to speak.

A VOICE. If we have time I would like to present it.

Senator PASTORE. I don't think anybody should be denied the privilege to read his statement if he so desires.

Mr. MARTIN. I am not going to read mine, Senator.

Senator PASTORE. I mean personally present his case.

Mr. MARTIN. I don't understand that Western Maryland needs to take any time. They simply wish to register their support for the bills and file a statement.

Senator PASTORE. If that is satisfactory I will accept it that way and we will place it in the record at this point.

(The prepared statement of George M. Leilich follows:)

TESTIMONY OF GEORGE M. LEILICH, VICE PRESIDENT, OPERATIONS, WESTERN MARYLAND RAILWAY CO., BEFORE A SUBCOMMITTEE OF THE SENATE COMMERCE COMMITTEE

My name is George M. Leilich. I am vice president, operations, of Western Maryland Railway Co. I would like to make a brief statement as a proponent of Senate bills 886 and 1840.

Western Maryland Railway Co., which has its headquarters in Baltimore, Md., operates under my supervision 840 miles of railroad in Maryland, Pennsylvania, and West Virginia. The greater part of our traffic consists of commodities which are transported in hopper and gondola cars such as coal, ore, cement, and limestone. We earn some 60 to 70 percent of our total revenue from this type of business.

In order that we may be fully equipped to serve the shipping public who use our facilities we have exerted maximum efforts for many years to provide a modern and well-maintained fleet of hopper and gondola cars. As of June 1, 1961, we own 10,880 of these cars, which constitute 75 percent of our total car fleet. This, by the way, represents an increase of more than 800 cars, or nearly 8.3 percent above our ownership of only 5 years ago. This is 12.75 percent more capacity than our ownership of 5 years ago because we have purchased only 70-ton hoppers during this period rather than the 55-ton cars we previously bought. By way of comparison I think I should call to your attention that the hopper and gondola car ownership among the railroads of the eastern and Allegheny districts of the United States, which include the lines with which we connect, has declined in excess of 11 percent during this same period.

Of the cars now owned by the Western Maryland, 2,000 are modern 70-ton hopper cars equipped with roller bearings and purchased new during the past 5 years. Over the same period of time we have purchased 300 new covered hoppers and 50 new gondolas. In addition, 311 hopper cars, 171 gondola cars, and 100 boxcars have been rebuilt during these 5 years.

Our bad order percentage for hopper and gondola cars has varied from 1.95 percent on June 1, 1956, to 7.55 percent on May 1, 1961, which compares with an average of from 4.95 percent on June 1, 1956, to 17.8 percent on May 1, 1961, for the eastern and Allegheny districts.

Thus, I think I can fairly say that the Western Maryland has made every reasonable effort to provide its shippers with a fleet of cars which are fully adequate in number and condition to meet their needs.

However, most of our traffic of the kind which I have mentioned moves to destinations off of our lines. Thus, for example, coal from mines on our line in northern West Virginia, including the very large mine of the Consolidation Coal Co. at Stringer, W. Va., moves principally to utilities and other industrial consuming points in Pennsylvania, New York, New Jersey, and the New England States. Ore, principally iron ore, from Canada, South America, and other oversea origins, which is unloaded into our equipment by our ore-handling facilities at Baltimore, moves mostly to steel mills in the Pittsburgh, Pai-Youngstown, Ohio area.

We must have a supply of the proper type of cars fully adequate to meet the needs of these vital industries. Otherwise, coal production will be impaired, unless cars are ready for loading at the mines, and ore ships will be idle in the harbor at enormous expense to shippers unless sufficient cars are on hand into which to unload the cargo when the ships dock. We know that our nearly 11,000-car fleet is fully adequate to meet these needs if our cars are promptly returned to us after their lading has been discharged. I say this upon the basis of average loading and fair turn-around time for this type of equipment.

However, our principal off-line destination territory is in what is generally called Official Territory (i.e., north of the Ohio and Potomac Rivers and east of the Mississippi River). These areas are served by railroads which are seriously affected by open-top car shortages in times when traffic is heavy. During such time we find it extremely difficult to get our cars returned to us and, as a consequence, we have had to resort to the use of foreign equipment to avoid mine shut downs and even then their production has been curtailed. Also, we have had to refuse to handle ore cargoes in order to protect our coal mines. On a number of occasions since the end of World War II, in periods of acute car shortages, we have sent our car service agents out in search of our equipment and have found it in use on other lines, contrary to car service rules, instead of being returned to us.

We believe that if our connections in the East had provided themselves with an adequate supply of cars, we would not have been obliged to turn away business and to hamper the operations of some of our mines. This also results in uneconomical operating practices, such as dispatching too many and too short trains, to assure maximum distribution of available car supply. All this is of especial concern to the Western Maryland because, as I have already stated, we know we have provided ourselves with a fully adequate fleet of cars, and we cannot justify enlarging our car fleet size, under present conditions, this would principally benefit our connections and their shippers rather than our own customers. Certainly a remedy should be devised for such a condition.

Of course, the railroads who use our cars pay us the prescribed per diem rental—now \$2.88 per day. But this is a wholly inadequate rental for freight cars which now cost more than \$11,000 each (our 1960 price, \$11,219), and I believe this committee has recognized that such is the fact. Particularly is this important to us, considering the extent to which our revenues come from traffic handled in hopper and gondola cars, and when we estimate that if these cars are available to us for loading we can earn, on the average, about \$20 each per day. And this is in addition to providing service to our shippers commensurate with their needs and in conformity with the measure we have taken to supply these needs.

I said a moment ago that there should be some remedy for these conditions. I understand the effect of Senate bills 886 and 1840 will be to give the Interstate Commerce Commission the authority, which it does not now have, to impose special charges in circumstances such as those which I have described. I believe, as do other supporters of these bills, that the result will be to either force the return of our cars when we need them, give us a more adequate rental if they are used by other railroads, or, best of all, cause our connections to increase their car supplies so that there will be no need for using our cars instead of promptly returning them to us. In effect, other railroads find it cheaper to rent cars when they need them and let roads, such as ours, bear the ownership burden when they don't need them.

Senator SCHOEPEL. Mr. Chairman, at this point I want to present a letter signed by Senator Gordon Allott, of Colorado, and addressed to the Honorable Warren G. Magnuson, chairman of this committee,

together with a statement which Senator Allott desires to have entered into the record at this point.

Senator PASTORE. Without objection it is so ordered.
(The documents follow:)

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
June 13, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Washington, D.C.

DEAR SENATOR: As a cosponsor of S. 886, I submit for the committee's consideration a statement concerning the adequacy of the national freight car supply and my explanation as to why I believe so deeply this bill should be enacted.

Having worked with you on S. 1789 last year, you are well aware of my feelings on this matter. If I can be of any further assistance, please do not hesitate to let me know.

Best regards.

Sincerely yours,

GORDON ALLOTT, U.S. Senator.

STATEMENT BY SENATOR GORDON ALLOTT BEFORE SENATE COMMERCE COMMITTEE

Mr. Chairman, once again we are faced with a freight car shortage for handling our harvest.

The Interstate Commerce Commission is worried, for example, about finding and moving enough cars to handle the near-record wheat harvest this year. ICC representatives are on location through the Plains States to help farmers and elevator operators keep the new wheat moving along. They have conferred with me, and I am sure with many of my colleagues, on this situation. As a result, I have written to State officials, major wheat growers, and others to point out the help ICC will attempt to provide and, also, offering my services to prevent a terrible loss of wheat. But these are stopgap measures. The enactment of proper legislation is essential. This is why I am cosponsor of S. 886.

Freight cars are generally rented at \$2.88 a day and the average cost of the cars is approximately \$10,300. Whether this is a just and fair per diem charge is more or less irrelevant. This is clearly not sufficient to provide the necessary incentive for either the production of a freight car fleet adequate to meet the national needs for day-to-day commerce or our defense interests. What is needed is a per diem charge which will do that job.

Unfortunately, since the 1947 decision in *Palmer v. U.S.*, where the court adopted a very narrow interpretation of the word "compensation," the Interstate Commerce Commission has been precluded from taking into consideration any factors other than the barebone cost of ownership. It seems clearly necessary, as well as fair, to consider the value of the use of the freight cars and even more importantly, the per diem charge necessary to provide an incentive for car ownership.

Coupled with these economic facts of life are the necessary laws and regulations which, in effect, allow one railroad to use the cars of another railroad, whether the owner likes it or not. I know of no one who could make \$18 or \$20 a day by using the property of another, available at \$2.88 per day, who would invest much of his own capital in buying such property.

But, the proof of the pudding is in the eating and the inescapable taste of this pudding is that this Nation needs several hundred thousand more freight cars than it now has.

During the harvest season, there will always, of necessity, be a shortage because the railroads cannot afford to have available the number of freight cars needed at the time of peak demand. However, the shortage should not be of such a desperate nature as to cause the tremendous injuries and burdens that occur annually. The harassed shippers and processors of sugarbeets, wheat, and other products in my State will attest to the recurrence of this problem. It is as predictable that during the harvest season this year, these people will call upon their congressional delegations for help in this regard as it is that those who are making a profit from the unrealistic rates will oppose this legislation. I have no bones to pick with these people. If I had as good a deal as

they, I would try to preserve it, too. However, the public interest and the best interests of the farmers of this country require that this legislation be approved, and the responsibility rests clearly with the Congress.

In my decade or two of public service, I have seen few problems where the public's interest is so clearly on one side and yet the selfish interests of a few have been perpetuated for so long. I have tried to review carefully and objectively the objections of the opponents of this legislation. Such objections fall into one or two categories. They either are fallacious and not based on fact, or they are based on technical problems which can be adequately handled by the Interstate Commerce Commission in its implementation of this legislation.

We must end the recurring freight car shortages which have been a national problem for several decades. The most judicious and effective way to do so is by enactment of S. 886, which I am privileged to cosponsor along with a number of my distinguished friends and colleagues on both sides of the aisle.

I hope all my colleagues who share my belief in the desirability of a sound transportation system in this country and fair treatment of the agricultural segment of our economy will agree that this legislation must be enacted without further delay.

Senator PASTORE. Mr. Martin, will you take a seat.

STATEMENT OF ELDON MARTIN, VICE PRESIDENT AND GENERAL COUNSEL, BURLINGTON LINES, CHICAGO, ILL.

Mr. MARTIN. Senator Pastore, Senator Schoepfel, gentlemen, the committee has a prepared statement which I submitted prior to the hearing. I would like it included in the record following this oral statement, if that is agreeable.

Senator PASTORE. All right, sir.

Mr. MARTIN. My name is Eldon Martin. I am a lawyer from Chicago. I am also vice president and general counsel of the Burlington Railroad and I am here for the following railroads in addition to my own: the Santa Fe; Chesapeake & Ohio; Burlington; Colorado & Southern; Denver & Rio Grande; Great Northern; Gulf, Mobile & Ohio; Illinois Central; Louisville & Nashville; Northern Pacific; Western Maryland; and Western Pacific.

Mr. Symes gave this committee some figures about the ownership of cars by his group and mine, if I may use that expression. He also submitted a couple of maps which show the railroads which each of us represents. I have no quarrel with that. I think the maps show that each of us represents roads scattered throughout the United States and that my representation very closely approaches his, both in mileage and in car ownership. That is perhaps beside the point because we don't decide these things, I hope, upon the basis of how many miles of roads you have or how many cars you have.

The fact remains that my group is nationwide, and that our car ownership is very substantial in each case.

I do want to suggest that this is not quite as much of an East-West fight as he implied in his statement. I think the maps which he submitted disprove that.

There is one significant factor about our two groups of railroads. Since January 1, 1955, my group has shown an increase in its car ownership of 2.8 percent whereas his group has shown a decrease of 7.3 percent.

Now, what is the purpose of this bill? It is really relatively simple, Senator Pastore, and I am glad you want simple statements because that is what I think I can give you.

Its purpose is simply to let the Interstate Commerce Commission consider all relevant factors and fix car rental charges on a basis which would encourage an adequate national supply of freight cars. That is the purpose, very simply stated. Now, what is the condition which the country faces with respect to car supply?

The chart on the easel, as well as the small charts which have been distributed to you, show what has happened to the car supply since 1945, and I call your attention to what has happened since 1959 when these bills or predecessor bills were before this committee. Conditions have become infinitely worse as appears from the charts and the need for action now is greater, far greater than it was then.

I do not suggest that the railroads should own today over 2 million cars as they did back in the twenties, or even 1,900,000 cars, which was the figure suggested in some earlier hearings.

As Mr. Symes has said, there have been changes which lessened the need for the same number of cars. The great industry of ours has become increasingly efficient in its use of equipment. We are getting longer hauls, we are getting higher loadings, we are getting higher train speeds and we do not need the number of cars which we had in the twenties. But, I doubt that anyone in this room would suggest that the present supply of freight cars is adequate to meet reasonable anticipated future needs even this year, and certainly it is inadequate to meet a reasonable projection of needs for the future, not only from the standpoint of the national economy but, gentlemen, from the standpoint of national defense.

We are down now as to all freight cars, all serviceable freight cars, to 1,590,000—some total.

In the prepared statement I will just give you a few figures for total ownership, and these are the figures that appear on the charts, January 1, 1945: 1,713,224; May 1, 1961: 1,485,769.

If you eliminate refrigerator cars, which I think should be eliminated because they are generally not per diem cars and because generally speaking the supply is adequate, the decline is this: from 1,693,194 in 1945 to 1,459,454 today.

Boxcar ownership, and that is the workhorse of the fleet, down from 712,000 in 1945 to 622,000 on May 1 of this year, a decline of almost 90,000 cars of ownership.

The bad order situation is as bad as it has ever been in history. An average of 9.7 percent—almost 10 percent—of all the freight cars of the United States are down, out of service, bad order. That is reflected on the chart by the widening spread between the two lines.

Senator PASTORE. Do you mind if I ask you a question, Mr. Martin, at this point?

Mr. MARTIN. Not at all, Senator.

Senator PASTORE. You have heard the testimony here with regard to the situation on the terminal lines which we have been talking about in the East. Of course, I am gravely concerned, I have no stock in the New Haven, I am interested in the people of Rhode Island who are serviced by that particular railroad. Do you think in your judgment that an exception could be made with regard to these terminal lines which have a very peculiar geographic problem, since the chances are it is not similar to other railroads throughout the country?

Mr. MARTIN. I am going to talk about that in later stages of my statement, Senator, but I will answer it generally right now.

I have the greatest sympathy for the plight of the New Haven, Boston & Maine, and the New England roads generally. They are in deep trouble, and I have the greatest sympathy for them.

I hope ways and means can be found to restore them to financial health, but I do not believe that their problems should be solved by depriving carowners of proper compensation for the use of their equipment. The courts and the Commission have said that several times, Senator. They have said that when a railroad gets into financial difficulty and complains about what it must pay for the rental of cars owned by others that is a separate problem which should be taken care of in a different way by giving it increased rates, by giving it an increased share of the revenue derived from transportation.

Senator PASTORE. Yes, but doesn't this bill that we are considering now put on the back of the per diem formula what actually belongs to the whole freight rate structure? The last sentence, for instance, on lines 13, 14, 15, and 16, says: "Contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

That is going pretty far afield to put this all on the back of the per diem formula.

Mr. MARTIN. It doesn't do that, Senator.

Senator PASTORE. What?

Mr. MARTIN. It doesn't do that, with all due respect to your statement.

Senator PASTORE. I am reading this bill S. 886.

Mr. MARTIN. Yes, sir; the bill states those objectives in the final paragraph and everyone that I know, including Mr. Symes, agrees that those are sound and worthy objectives. He says they are the goals of the industry, but he says: "We don't like the way we think the Commission would undertake to attain them."

Senator PASTORE. No, he states them to be goals, but he says you should achieve these goals not through this one sectionalized per diem situation. He feels that that is the whole panoramic complication of the railroad problem, and that is the reason why I asked you the question whether that isn't an element of a gravamen for the establishment of the whole structure of the rate rather than the per diem situation. I mean, why should you saddle this whole national defense on the per diem?

Mr. MARTIN. I don't.

Senator PASTORE. Well, this act does.

Mr. MARTIN. No, I respectfully disagree.

Senator PASTORE. The act does. The Commission is to take that into account in fixing the per diem rate.

Mr. MARTIN. Is there anyone in this room that disagrees with that statement of objectives?

Senator PASTORE. None at all, it isn't a matter of objectives, but it is the question of who burdens the objective. Why does the per diem have to be burdened by this objective? Why doesn't the whole rate structure, the freight rate that you charge, let's say, a shipper, why shouldn't that be an element?

Mr. MARTIN. It should be, I agree.

Senator PASTORE. But this only has to do with the per diem?

Mr. MARTIN. Because that is the particular problem we are now attacking and it is a very definite part of the way you get an adequate supply of freight cars which is the problem before this committee.

Senator PASTORE. Now you say here, let's go back a little bit, you are familiar with this bill?

Mr. MARTIN. Yes, I am.

Senator PASTORE. Have you a copy before you?

Mr. MARTIN. I have, indeed.

Senator PASTORE. Let's look at page 2. It says there—let's read the whole thing very, very carefully. I think it is quite important.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(14)(a) of the Interstate Commerce Act is amended by adding at the end thereof a new section reading as follows: "In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership * * *"*

That is a pretty broad thing, isn't it?

Mr. MARTIN. It certainly is a factor they should consider in fixing car rental charges.

Senator PASTORE. Why?

Mr. MARTIN. Because it is their duty to maintain an adequate supply of cars in this country.

Senator PASTORE. It is their duty in line of promoting their business.

Mr. MARTIN. To promote the public interest and the national economy.

Senator PASTORE. And to promote the profits of the railroads, too.

Mr. MARTIN. Oh, if possible.

Senator PASTORE. What do you mean, if possible; you are in business to make money.

Mr. MARTIN. We hope so.

Senator PASTORE. Of course. [Continuing reading:]

and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return—

this only becomes more or less an afterthought, but this I think is a very essential part of establishing the rate, including a fair return—"on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet)."

Now why isn't that really the basis for establishing ratemaking insofar as freight charges are concerned, let alone per diem?

Mr. MARTIN. It is a wholly different question, Senator, what shall be the charge against the shipper for the freight you haul and what should be the charge between carriers for the use of a freight car owned by one and used by another.

Senator PASTORE. Yes; but why should the New Haven be worried about how many cars you are going to acquire? All they should pay for is the use of that freight car when it comes in from you; and the use of that freight car should be predicated upon what it costs you

to buy it, what it costs you to keep it in repair, what it costs you to keep it on the road, and a fair return on your money after you have done all that. Why should you go beyond that?

MR. MARTIN. Senator, those are the questions which the ICC will consider.

Senator PASTORE. And those are the questions that the Supreme Court of the United States said were fair.

MR. MARTIN. The Supreme Court of the United States simply said to the Commission, "We think you should consider these factors which have been suggested by those attacking the charge." They didn't say that you must include them. They said in effect what this bill says—that the Commission should consider all relevant factors in determining what the per diem charge should be, and that is all this bill does, that is all the Court told the Commission it should do.

Senator PASTORE. You mean that this bill carries out the finding of the Supreme Court, the opinion of the Supreme Court?

MR. MARTIN. It has the same objective in the sense—

Senator PASTORE. I am not talking about the objective, I am talking about the elements of the formula.

MR. MARTIN. The elements of the formula are for the Commission's consideration. The Court said, "You didn't consider certain factors; you should have considered certain factors." This bill says you may consider any relevant factor.

Senator PASTORE. This bill actually says "what is relevant," and the people here are saying that these matters are not relevant.

MR. MARTIN. I beg your pardon, Senator, the bill says it should consider this, or that, or any other factor that will attain these objectives.

Senator PASTORE. All right, Mr. Martin.

MR. MARTIN. I think there has been some considerable misunderstanding about what this bill does. It will not automatically increase per diem charges, not at all; that will depend upon what the Commission decides after a full hearing in which it is now engaged.

Senator PASTORE. And your argument that you are making here to me this morning is that this bill says nothing more than what the Supreme Court has already said?

MR. MARTIN. No; I didn't say that. I said that the Supreme Court directed the Commission to consider certain factors which it had not considered. I am saying that this bill says to the Commission, "consider any factor which in your expert judgment you deem pertinent and proper and relevant in deciding what the charge should be."

Senator PASTORE. Even if the Supreme Court forgot to mention it?

MR. MARTIN. Why, of course. The Supreme Court, Senator, did not undertake, and it certainly should not undertake, nor should this committee undertake, to tell the Commission what it should consider.

Senator PASTORE. Of course, that is what this bill does; this bill is telling the Commission what to consider.

MR. MARTIN. It says it may, it doesn't say it must. It says, in effect, it may consider any relevant factor, and that is what you ought to tell the Commission.

Senator PASTORE. Now, wait a minute, I can read English, too, Mr. Martin. In fixing the compensation to be paid "the Commission shall give consideration"—it doesn't say "may give."

Mr. MARTIN. Shall give.

Senator PASTORE. That doesn't say "may." I read this to you. You are saying now that the Commission may do this or may not do this. This bill says it must do it.

Mr. MARTIN. I am talking about what it shall consider and what it may do after such consideration.

Senator PASTORE. That is a horse of a different color.

All right; you may proceed.

Mr. MARTIN. This bill, I repeat, simply permits the ICC to consider any and all factors which it believes to be relevant in attaining an adequate national car supply.

As a matter of fact, I respectfully suggest that anybody who disagrees with the idea expressed in these bills either has a selfish interest which he wishes to protect or he is afraid to permit consideration of all relevant factors by the impartial tribunal which this Congress created for the specific problem.

Now, as to whether or not this current charge of \$2.88 is or is not adequate, reasonable, or what, there is no point in getting into that here before this committee; that is not this committee's problem: it is the Commission's problem. I disagree with Mr. Symes and Mr. McGinnis and others. I don't think it is adequate even as a bare-bones basis. They think it is more than adequate for that purpose. There is no profit for us here in arguing about those questions. They involve an accountant's paradise and they will be fully considered in the pending ICC cases.

We very definitely are of the opinion, however, that to whatever extent the existing charges may provide return on investment, compensation for repair costs, and so forth, they don't contain any profits.

I think of profit as something other than return on investment. I think of profit as something that should be included in any rental figure if you want to maintain an adequate supply of the article or the commodity you are talking about. It doesn't include any increment to attract capital, a phrase which I took from a court decision cited in the prepared statement. Those are the things which we believe ought to be considered if you want to get an adequate supply of freight cars.

We think that unless the owner can make at least a little money out of his investment he will shrink from it; and we think that is what has happened in the past generation, and that is why the supply of freight cars shows this serious decline.

The basic philosophy is that if you are going to get an adequate supply of anything you must permit the owner to make a little profit. It is inherent, I think, in all sound economic thinking, but more than that it's inherent in the car service rules. The note to rule 19 of the car service rules points out that sometimes you get into situations where one road doesn't have enough and the other has enough, and you get into a car shortage and the Commission said that under those conditions the charge for the use of cars necessarily must go beyond the mere car hire.

I quote the words, "go beyond mere car hire." That's the phrase that appears in the car service rules and shows that over a long period of years it has been recognized that if you want to get an adequate

supply of freight cars you have to make car ownership attractive and provide some profit for the car owner.

I was interested in this Life magazine editorial, June 9, in one sentence, it's an interesting editorial, most of you must have seen it, it says:

The fundamental choice the Nation confronts is whether to let the profit incentive go back to work in the industry.

That's the essence of what we are here suggesting. Tell the Commission that you want an adequate supply of freight cars, tell them that they should provide incentive in the rental charge to make it possible.

Now what about the objections to this legislation?

You don't hear any from the ICC; you didn't hear any from the Doyle Committee, the subcommittee of this group that considered this problem and recommended enactment of this legislation; you don't hear any from the National Association of State Commissioners. Those are all unbiased, impartial, independent thinkers on the subject. You don't hear any objections from those sources. You hear some objections on the theory that this might create an excessive car supply. Well, we haven't had an excessive car supply for a generation. If it would that would mean that the bill had accomplished its objective. Certainly it would be worth a try.

Now, to get to the terminating line problem, Senator, I know this is of great interest to you.

There is a problem, particularly at the ports, where there are delays in getting a car unloaded. Mr. Symes said this free time runs from 5 days up in some cases as high as 15, and that's a fact. That's at ports on export traffic. He suggested that the burden of the terminating line was greater than the burden of the originating line. Now I don't believe Mr. Symes ever worked for a grain road in the West. Let's take the port delay on export grain. Let's assume, as it is a fact, that up to 15 days free time, so-called, is permitted. You must remember that it isn't always used by any means, it's a maximum, some of these cars go into the ports and are unloaded in 24, 48 hours. Now when it comes to originating that grain the roads out in the western territory have to start accumulating cars for those loadings as much as a month in advance of the time that they move. They have to spot them at all parts of their territory so that when the orders come they can distribute them efficiently and quickly. They have to inspect them, they have to make repairs very frequently in order to make them safe for grain loading.

I submit, although I have no detailed figures to support this statement, but I firmly believe it to be true and I have checked it with a number of transportation officers of long experience, they tell me—and I believe it to be true—that in connection with the movement of grain from the producing territory for export the burden of car-days, which means the burden of per diem, is greater on the origin end than it is on the destination end, that there are more car-days spent waiting for that load and getting it loaded and getting it on its way than are spent in removal of the load at the destination.

This burden exists on both ends of the equation, and I believe that it exists to a greater extent in the origin territory than it does in the terminating territory.

Now to the extent that the Commission would, after full hearing, and under a bill which permitted consideration of all relevant factors, create a condition which involved impossible hardship or inequity as to any road, there are many, many ways of alleviating this.

First, at a port, for example, if cars pile up at a port to such an extent that it's creating a horrible burden in the way of per diem or otherwise, an embargo can be placed it has been done, both at the Atlantic ports and the gulf ports.

Incidentally, we in the West know something about this port problem because we serve the gulf ports, they do pile up occasionally, but if the problem becomes terribly serious in the nature of an emergency the port can be embargoed and that will stop it and permit you to work it off.

Senator PASTORE. Who would do that?

Mr. MARTIN. The terminating railroad has that power.

Senator PASTORE. To institute the embargo?

Mr. MARTIN. Yes, sir.

Now we don't like to do it when we have done it, but it's an escape from this problem when it becomes insurmountable. It's one escape.

Senator PASTORE. As I understand it, it isn't so much the incidents that might arise from time to time that would create this situation which they complain of, it's the geographical location and the very character of the railroad that commands it in a day-to-day basis. I mean, it's an existing situation. In other words, as I listen to these men, this embargo would have to be put on January 1 and removed December 31?

Mr. MARTIN. It can be put on for any period that is necessary.

Senator PASTORE. For instance, I would suppose that a great deal of freight comes into Providence. When it comes to filling up these freight cars you really have a problem, because we are not that kind of a geographical location, that kind of a port. We have always tried to develop our port facilities in Providence, and we have fine port facilities, but we bring in a big boat, it unloads and then we can't fill it up. For that reason they bypass us and they go to New York, or they go to Boston, or they go to Baltimore or Philadelphia where they can pick up their return loads. That's our problem.

In line with that situation, what is there about this bill, if it is a fair bill, that could be added to it so that it could be modified in a way? If the Congress were of such a mind to pass a bill, my impression is it should not, and I will be frank with you, after all, I am only one of a hundred in the Senate, because others may disagree with me. I know our problem, other people won't agree with our difficulty. The fact of the matter is, realizing the fact that you do have a situation with these small terminal railroads, what is there in this that would do equity to them that would modify the bill?

Mr. MARTIN. I don't believe there is anything you could put in the bill to take care of that problem, seriously sympathetic to some such efforts. The difficulty, as expressed by the U.S. Supreme Court in another case cited in the prepared statement, here is the language of the Supreme Court:

If as claimed, the earnings of the short lines are insufficient to enable them to make full payment of car hire costs the Commission may be able to afford a remedy by increasing the rates or by a readjustment of the division of joint rates.

Those are two of the ways to take care of the needs of the terminating lines or the lines that are having difficulty with their earnings. And there are others.

The Car Service Division of the AAR, as well as the ICC, have enormous powers in this area, both of them; they can issue special rules, they can provide for reclaims, they can change the rules.

Incidentally, on the port delays, this is a practical problem. The free time, so-called, does not have to be 5 days or 10 days or 15 days. Competition creates a desire for it, the shippers like it, but it does not have to be so. If this creates impossible problems and the Commission can be convinced of the fact it can authorize a lesser free time or a higher charge against the shipper for the time used beyond the specified period.

There are literally dozens of methods whereby any true injustice, inequity, or severe hardship can be alleviated but we say it should be done through those other methods and not by holding the car rental charge to a figure which makes it unattractive.

Senator PASTORE. Let me ask you this question: Why isn't the mileage of a railroad important in establishing the per diem figure?

Mr. MARTIN. The best answer I can give you to that, Senator, is this: It was considered as a part of the per diem charge in the early days of railroading for some 40 or 50 years, then the experts in the industry decided that was not the best way to do it.

And I accept their judgment. But, I would also say at the same time that if the Commission decides that there ought to be a mileage factor in the car rental charges then we would accept it. We might fight it; we might disagree with it, but they are going to have to consider it as a result of what the Court said to them.

Senator PASTORE. What is wrong with writing it in S. 886?

Mr. MARTIN. Because I do not think you should write any specific factors into it.

Senator PASTORE. Well, you have been writing factors in here. You are telling them things to consider, why should they not consider the mileage?

Mr. MARTIN. The courts already have told them to.

Senator PASTORE. What is wrong with putting it in here?

Mr. MARTIN. Consideration?

Senator PASTORE. Yes. You say here in—

fixing the compensation to be paid for the use of the freight cars the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply, and shall take into account the mileage of a railroad and the age of a car.

Why shouldn't that be written in there?

Mr. MARTIN. That is congressional ratemaking, I think, at its worst.

Senator PASTORE. We are telling these people what their guidelines should be, why don't we tell them all?

Mr. MARTIN. The guidelines that this bill contains are guidelines that refer to the obvious factors that affect the national car supply; in fact, that is all the guideline is; it is the statement "You may consider any factor which in your judgment affects the adequacy of the car supply."

That is a proper guideline.

Senator PASTORE. Mr. Martin, if you can stand a cliché at 12:30 in the afternoon, let me say this: that the guidelines here will destine the per diem going up, unless I have wasted 54 years of my life.

Mr. MARTIN. If the Commission so finds, but it does not require it.

I ought to mention briefly a couple of points that Mr. Symes mentioned, demurrage versus per diem. He missed the point that was made in the Senate committee report, I think.

The point was not that demurrage charges exceed total car hire charges, of course they do not—on any railroad. The point was that during the period between the time a car is spotted for delivery to a consignee and the time that consignee releases it and puts it back in the stream of commerce, demurrage charges collected from the shipper constitutes a very substantial and very important offset against any car rental charges which may accrue during that same period, between delivery or spotting of the car and its release.

The statement contains a brief reference to the cost of new freight cars which is \$10,500 or thereabouts, our last batch of some 300 were at that figure. And this \$2.88 per day, it almost shocks you—it would shock any man that you pick up off the street—to think you could rent a \$10,500 item for \$2.88 a day.

His own experience tells him that there is something wrong with that, he has rented automobiles, television sets and other things, and to suggest that an item that costs today \$10,500 should rent for \$2.88 does not make much sense to him, any more than it does to us. And one of the reasons that we have this shortage of cars on a national basis, on any projection of increased business, is a result of that fact.

You have your truck trailer that costs about \$6,500 and when they interchange them they get \$8 a day for them.

One other factor is this. Mr. Symes referred to Trailer Train, the owner of a great many of these 85-foot flatcars. That is a fine organization. The Burlington, which I represent, is a part owner of it, and it has increased its supply of these needed freight cars by leaps and bounds.

It has grown like a mushroom, and it has a sort of a hybrid type of rental under a contract for the use of those cars and it figures out, one of my associates in the transportation business, a director of the Trailer Train Co., advised me the other day that that figures out a little better than \$4 a day for the use of those cars.

In other words, they have adopted a policy which we ourselves advocate and think the Commission should consider to make this car ownership attractive and you will get the cars you need.

I am almost through.

I mentioned the fact that considering my group of roads as contrasted with Mr. Symes' group, that our ownership had been going up 2.8 percent increase since January 1, 1955, contrasted with their decrease of 7.3 percent during the same period.

Now, if the Symes' group of roads had done just as well as we had done during that period, if they had increased their ownership by only 2.8 percent since January 1, 1955, the country would have today 85,417 more freight cars. And if all class I railroads had done as well as my group had done during that period, that is to say increased its ownership by a modest 2.8 percent over January 1, 1955, the country

would have 138,601 more cars than we have today in the national growth and if we had those I don't believe we would have a very serious problem.

Just a word about the short lines. They do not own hardly any equipment; little, if any. I do not know what cards they have in this game, although I think my friend, Mr. Hickey, might have a statement to submit.

As Mr. Symes says, and as Mr. Hickey may admit, they own few, if any, cars. They do not pay these charges really, the connecting trucklines bear most of the burdens of per diem when a car is on the short line. I had one little other investigation made just before I came down.

We have one of those small railroads that connects with the Burlington, Lee County Central Electric, 15 or 16 miles long, connection with us at Amboy, Ill.; it gets a division of the through charges.

I asked our transportation accounting department to tell me how much per car-day that company actually paid for the use of the freight cars it used during the calendar year 1960. Do you know what the figure was in contrast to the \$2.88 that is standard? Twenty-six cents. We took the rap for the balance, and that is a condition that exists to a considerable extent throughout the country.

Now, I don't suggest that that is all they pay on an average of all the short lines; I just had one, and it may have been a fortunate one from my viewpoint, but I do suggest on the whole they do not pay anything like \$2.88 a day, because reclaims reduce that figure, I think, at least by half.

One final subject, and that is labor. There is another chart here which shows the decline in employment in the railroad shop crafts from 1945 to 1961.

We think that a basis of car rental charges which will make car ownership attractive and will stimulate investment in that type of equipment will put many of those men back to work.

I suppose I should not, in view of the time, spend any more of your time on the conclusion of Mr. Symes' testimony. I did not know we were here to discuss a House bill which would provide for Government ownership of railroad equipment. I don't take any position here on that issue; I did not think it was before us.

I can't resist, however, pointing out that when that suggestion was presented to the House committee, the presiding chairman said, "Well, that is the way they do things in Russia; the government owns everything and lets the folks use it on such terms as it may fix."

In conclusion, we have had these recurrent serious freight-car shortages for 30 or 40 years. There never has yet been a satisfactory solution for it. The best brains of the AAR tried and failed.

This experiment has never been tried. We believe it is a simple, self-executing method whereby the Nation can get a car supply adequate to meet the needs of commerce and the national defense. Simply make car ownership an attractive investment. We hope you will approve the bills, Senator.

Senator PASTORE. Thank you very much, Mr. Martin.

Mr. MARTIN. Any questions?

Senator PASTORE. No. As a matter of fact, I asked you my questions, and I merely wanted the record to show that your presentation was excellent, very eloquent. While I disagree with you, and I have that privilege as you have the privilege of disagreeing with me, we have certain very, very tragic problems insofar as transportation is concerned in my part of the country which disturbs us very, very much. That is the reason we explored the way we did.

No particular offense to you and no particular inference can be made or drawn on the case presented here today. We are developing this record for the purposes of the consideration of the Congress. And because I disagree with you does not necessarily mean that you are wrong, and the fact that you disagree with me does not necessarily mean that I am wrong.

Mr. MARTIN. I understand, sir.

Senator PASTORE. It is this give and take that crystallizes and purifies the record.

Mr. MARTIN. I wish I could suggest a method whereby help could be given to the lines in your territory.

I just can't.

(Mr. Martin's statement in full follows:)

STATEMENT
CONCERNING
RELATION OF CAR RENTAL CHARGES TO CAR SHORTAGES
FOR PRESENTATION TO
THE SENATE COMMITTEE ON INTERSTATE COMMERCE
AT HEARINGS IN WASHINGTON, D. C.
JUNE 13-14, 1961
IN SUPPORT OF S. 886 AND S. 1840, 87TH CONGRESS

My name is Eldon Martin. I am Vice President and General Counsel of Burlington Lines, with headquarters at Chicago. I am here to speak for a group of important car-owning railroads, including:

The Atchison, Topeka and Santa Fe Railway Company
The Chesapeake and Ohio Railway Company
Chicago, Burlington & Quincy Railroad Company
The Colorado and Southern Railway Company
The Denver and Rio Grande Western Railroad Company
Fort Worth and Denver Railway Company
Great Northern Railway Company
Gulf, Mobile and Ohio Railroad Company
Illinois Central Railroad Company
Louisville and Nashville Railroad Company
Northern Pacific Railway Company
Western Maryland Railway Company
The Western Pacific Railroad Company

Collectively, these railroads operate more than one-fourth of all the railroad mileage in the country; own more than one-fourth of all the railroad freight cars now in service; and--significantly--own almost one-third of all the nation's box cars.

We favor and support S. 886 and S. 1840, the identical bills now before you for consideration.

As you know, S. 886 was introduced February 9, 1961, by Chairman Magnuson for himself and 31 other Senators. S. 1840, an identical bill, was introduced May 11, 1961, by the Chairman at the request of the Interstate Commerce Commission. These bills are exactly the same as S. 1789 in the 86th Congress, which was favorably reported by this Committee (Report No. 452, 86th Congress, 1st Session, Senate Calendar No. 447).

The purpose of these identical bills is "to insure the adequacy of the national railroad freight car supply." They would amend the car service provisions of the Interstate Commerce Act by adding to Section 1(14)(a) a single new sentence reading as follows:

"In fixing the compensation to be paid for the use of freight cars, the Commission shall give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply and shall, on the basis of such consideration, determine whether compensation should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including a fair return on value (which return shall be fixed at such level as in the Commission's judgment will encourage the acquisition and maintenance of an adequate freight car fleet), or should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

In short, these bills would direct the Commission, in the exercise of its long existing power to fix car rental or "per diem" charges, to give consideration to all relevant factors, and prescribe such rental charges "as in its judgment * * * will encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

In other words, Congress would thus state its standards and objectives, and leave to the judgment of the Commission the best method of attaining them.

These statements will be clarified later but, at the outset, a few general comments will set the stage and serve as background.

The freight cars of the United States move indiscriminately over all railroads. Theoretically, when a particular car is thus used by non-owner railroads, the owner is made whole by daily rental payments, known as per diem charges, which, currently, are \$2.88 per day.

We believe that car rental per diem charges are an important factor in car supply and distribution, during car shortages and otherwise. We strongly favor legislation such as S. 886 which, if followed by proper I.C.C. action, will provide an incentive for increased car ownership; promote more expeditious movement of freight cars at all times; and, during a car shortage, will partially offset the revenue loss sustained by a car owner when his cars are appropriated by others.

Let me state, if I can, (1) the problem to be solved, (2) the conditions or causes which created it, and (3) the solution, as we see it.

Briefly, the basic problem or objective is to get more freight cars. We don't have enough because we have discouraged the acquisition or construction of new cars. The solution lies in substitution of an incentive which will make car ownership more attractive. I want to develop each of these points, but it will be helpful if you will bear in mind this simple statement of the problem, its cause, and its cure.

The Problem:

The problem, as this Committee knows, is serious, recurring, and vital to our economy and our national defense.

As this Committee said in its report on S. 1789, "freight car shortages, of varying duration and severity, have plagued this country and its shippers for more than a generation." It is true that during recent periods of slack business only "spot shortages" have occurred, but the national ownership of serviceable freight cars has declined to a perilously low level, and any substantial upturn in business would create a demand for cars, later this year, far in excess of the available supply. This is a prospect of grave importance, both to the national economy and the national defense.

During the Twenties and early Thirties, freight car ownership of Class I railroads exceeded 2 million cars. The fleet declined during the Depression of the middle and late Thirties, and increased during World War II. Beginning in 1945, total ownership figures, and the number of serviceable cars, are as follows:

<u>Date</u>	<u>Cars Owned</u>	<u>Serviceable Cars</u>
January 1, 1945	1,764,109	1,713,224
January 1, 1950	1,749,736	1,615,276
January 1, 1955	1,735,553	1,619,353
January 1, 1960	1,677,965	1,556,602
January 1, 1961	1,661,577	1,505,730
May 1, 1961	1,645,547	1,485,769

FREIGHT CAR SHORTAGE

If refrigerator cars are eliminated--as they should be (because the supply is adequate and they are not generally subject to per diem charges)--the comparable figures are as follows:

<u>Date</u>	<u>Cars Owned Excluding Refrigerators</u>	<u>Serviceable Cars Excluding Refrigerators</u>
January 1, 1945	1 744 179	1 693 194
January 1, 1950	1 730 686	1 596 226
January 1, 1955	1 716 804	1 600 604
January 1, 1960	1 657 792	1 536 429
January 1, 1961	1 636 695	1 480 848
May 1, 1961	1 619 232	1 459 454

Finally, if the tabulation is limited to box cars--the general-purpose car which is the work horse of the fleet--this is the picture:

<u>Date</u>	<u>Box Cars Owned</u>	<u>Serviceable Box Cars</u>
January 1, 1945	742 447	712 637
January 1, 1950	714 914	680 666
January 1, 1955	717 013	679 432
January 1, 1960	705 738	655 665
January 1, 1961	692 565	634 561
May 1, 1961	682 232	622 476

As indicated in the foregoing tables, the serviceable ownership of freight cars has declined more drastically than the number of cars owned. On May 1, 1961, almost 10 per cent (9.7%) of the total ownership was out of service, awaiting or undergoing repairs. This is the highest "bad order percentage" which has existed in more than 20 years.

The alarming shrinkage in the national car fleet, and the unfortunate increase in "bad order" cars, has been accompanied by a continuing decline in the number of new cars on order. Here are some recent figures:

<u>New Freight Cars On Order</u> (End of Month)	
April 1959	45617
April 1960	36707
April 1961	13157

It is thus apparent that, viewed from any angle, our depleted national car supply is a problem of major importance which poses a most serious threat to the needs

of commerce and the national defense. This is a recognized fact, well known to the members of this Committee, and unchallenged even by those who oppose the pending bills. I have reviewed these facts, and brought them down to date, so you will understand that the problem is even more serious than it was when you urged enactment of remedial legislation almost two years ago. The need for action is more urgent now than ever before.

I turn now to the conditions and causes which created this important problem.

The Cause:

The basic reasons for our depleted inventory of freight cars, and the inefficiency and inequity which go with it, are not difficult to state or understand. They rest upon the sound and simple principle that one who must use a particular article in his business will either own it, or rent it from others, in the light of his own selfish interests. Other factors being equal, he will rent, rather than own, if the rented article will serve his purpose and cost him less in the long run. This is particularly true if the article comes into his possession fortuitously, without effort or negotiation, and he is lawfully permitted to use it by payment of a rental which is far below its value to him or to the owner. This is true whether the article is an apartment, an automobile, or a freight car. As I shall demonstrate in due course, this obvious principle explains the existence of our depleted inventory of freight cars, as well as the misuse and maldistribution of those now in service.

Per diem charges are too low to reflect the value of such cars, to their owners, especially during car shortages. The present per diem charges of \$2.88 per car day do not cover the full current costs of ownership, such as depreciation, interest, taxes, repairs, et cetera, to say nothing of profit, and are far below the amount which a car owner could earn daily by the use of the car on his own railroad, when a shortage exists.

To us, this seems most unjust, on grounds of common fairness, but from the standpoint of the national interest this theory is fraught with dangers which transcend injustice to a particular railroad. This is so because the policy referred to actually discourages the construction of new freight cars, and places a premium upon inadequate car ownership.

Just so long as it is cheaper to rent a car than it is to own one--and that is the situation today--underbuilding will be the policy of strategically situated railroads, and construction will be held to minimum requirements.

Under present conditions, we have a form of involuntary leasing and rent control which discourages car ownership, places a penalty upon those railroads which buy or build new cars, and, conversely, encourages those which can do so to appropriate and use the cars of others instead of making a fair contribution to the national inventory of such equipment.

The situation is not unlike that which prevailed in this country, and in some other countries, when residential rent control was in effect, that is, when a tenant could sit in an apartment which he had rented at a relatively low rental, and could continue its occupancy without regard to the interests of the landlord. You did not then get, and you could never get under such controls, the rental housing which we now have. When rent control was abolished, you thereby provided the incentive for construction of residential housing. You had a surge of home-building such as this country had never seen, and it is my humble opinion that if you tell the Interstate Commerce Commission that you favor some incentive in the per diem charge, you will see a similar surge in freight car building.

This Committee, in its favorable report on S. 1789, 86th Congress--a bill identical with S. 886 and S. 1840, now before you--stated the causes of this important problem in the following language:

"Inadequate earnings by some of the railroads are an important factor. The high cost of new freight cars, coupled with unrealistic depreciation allowances, is doubtless a contributing factor. But, at the heart of the matter will be found a basic and fundamental cause; namely, the simple, economic fact that for many years it has been cheaper for a railroad to rent a freight car than to own one, with the result that freight car ownership has become increasingly unattractive, as an investment or otherwise."

We endorse, without reservation, the foregoing statement of the "basic and fundamental cause" of our grossly inadequate national supply of freight cars.

The Solution:

The solution is to encourage the establishment and maintenance of per diem charges at a figure which will make it more attractive to an individual railroad to buy and own cars. Now, and for many years in the past, the charge has been so low as to make it more profitable to use cars owned by other lines.

That part of a railroad's net income which is retained in the business can be used for many worth-while purposes, including acquisition of diesel locomotives, construction of modern classification yards, installation of modernized signal systems, reduction of grades and curves, et cetera. Any such project will yield a far greater return on the investment than acquisition of new freight cars under the current per diem rates. Under these conditions, little if any incentive exists for further investment in freight cars, and the railroad President who authorizes such an investment is necessarily hard put to justify, to himself and his stockholders, an investment in property which will produce little or no return, and which often is not available when it is most needed.

The prospective purchaser of freight cars wants and needs reliable assurance that per diem charges will be fixed sufficiently high for car ownership to be a profitable and desirable form of investment. Conversely, every railroad should be put on notice that it will no longer pay to shrink from compliance with the duty of owning and maintaining a fleet of freight cars adequate to carry its proportion of the traffic moving over the nation's rail network. Unless this is done, the shipping public will continue to suffer from recurrent severe car shortages.

The present statutory powers of the Interstate Commerce Commission apparently are inadequate to enable it to increase per diem charges for the purpose of promoting greater efficiency in the use of cars, and to the end that the national inventory of freight cars may be increased. In Increased Per Diem Charge on Freight Cars, 268 I.C.C. 659, the Commission ordered an increase in the per diem rate to accomplish these objectives. On complaint of railroads having a deficiency of car ownership and accustomed to rely heavily on their ability to utilize the equipment of other railroads, the order of the Commission was set aside. Palmer v. U. S., 75 F. Supp. 63. The precise legal effect of that decision is

not clear, but, apparently, legislation is needed to overcome the possible adverse effects of the Palmer case, and to make it entirely clear that the Commission should not be hampered in its efforts to "provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

I have just quoted the concluding phrases of S. 886 and S. 1840. The railroads for which I speak endorse these bills as sound and constructive legislation. In effect, they would simply authorize the Commission, as a part of its continuing regulatory power, to prescribe compensation for the use of freight cars on a basis which will encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

Per diem charges established in conformity with these principles would (1) provide an incentive to all railroads to procure and maintain an adequate car supply, (2) encourage more expeditious movement of all such equipment, and (3) provide partial reimbursement to car owners for losses suffered when their equipment is appropriated by other railroads.

The first of these objectives has been discussed. It can and should be attained by a method so obvious, simple, and effective that it should have been adopted long ago, i. e., put some profit into freight car ownership.

The second objective is more complicated, and more difficult of attainment. It is generally conceded that higher daily rentals would expedite car movements during periods of light or normal business. It can be argued that higher per diem charges during a car shortage will not expedite the movement of freight cars, or hasten their return home, because the user can still make money by using them at a rental twice or three times the normal charge. This argument has some substance--but it is nevertheless hard to believe that a higher per diem charge would not, in some degree, operate to expedite the movement of freight cars, because that would be the only way to reduce the incidence of the charge. The same principle, applied to demurrage charges, has been effective in bringing about quicker release of cars by shippers. In fact, the court decision mentioned above recognized the soundness of the principle that "any charge upon a time basis furnishes an incentive for prompt return of the property" (Palmer v. United States, 75 F. Supp. 63, 68).

Be this as it may, simple justice suggests that the improvident railroad should not profit from its own wrong, when it takes from the provident car owner--not only the car itself--but also the profits resulting from its use. This gross inequity could be partially corrected by the Commission, if it should decide to correct it, under the provisions of S. 886 and S. 1840. This is the third objective of these bills.

A railroad which owns an adequate supply of cars will not suffer from the imposition of higher per diem charges, because its payments for the use of foreign cars will be offset, substantially, by receipts from the use of its cars by foreign lines. On the other hand, the improvident railroad, which owns few, if any, cars and is doing business on the car investments of others, will have a debit balance in its per diem account, until such time as it acquires more cars. This is as it should be.

It may be argued by the "improvident" lines, which do business on the car investments of others, or by certain railroads which find themselves, fortuitously, in possession of cars unloaded on their lines, that higher per diem charges would place upon them a severe financial burden, in the form of increased car rentals.

In the first place, this burden would not generally arise because a railroad which finds itself in possession of a freight car, during a serious car shortage, can earn from its use from three to ten times the amount of the current car rental charges; and in times of slack business the incidence of the charge would be necessarily lighter.

In the second place, even if some slight additional burden were thus placed upon a few railroads, that fact would not justify confiscation of the car owner's property. "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title," Chicago, M. & St. P. Ry. Co. v. Minnesota, 134 U.S. 418, 458; Chicago, R. I. & P. Ry. Co. v. United States, 284 U.S. 80, 96-97.

Third, machinery is available in the Car Service Division of the Association of American Railroads, and, indeed, in the Interstate Commerce Commission, to correct any true inequity which may result from application of these sound principles. So-called "per diem reclaims," which permit readjustment of car hire charges under special circumstances, are frequently adopted for this purpose.

In connection with the alleged burden upon the so-called "debit" railroads, which do not own enough cars to take care of their requirements, it is important to bear in mind that payments by the "debit" lines for the use of cars owned by other railroads, are deductible as operating expense for Federal income tax purposes, whereas the rentals thus received by a car owner are taxable income. Of course, this compounds the injustice to the car owner, as well as the unjust enrichment of the car user.

Still another element of this injustice is the fact that the improvident railroads, which own few, if any, cars, thus avoid the risks inherent in capital investment, as well as payment of interest charges during times of light business. Even if we indulge the unjustified assumption that current per diem charges (\$2.88 per car day) cover bare bones ownership costs, such charges clearly do not include any "profit" or any "increment to attract capital to the venture" (See El Paso Natural Gas Company v. Federal Power Commission, 281 F. 2d 567, 572. Theoretically, the per diem charge includes an interest factor, but the point here made is that the improvident lines force others to incur the risks of such investment; can well afford to pay substantially higher per diem charges during periods of heavy business; and would of course pay less--in the aggregate--for car hire during periods of light business. Remember, too, that during periods of heavy business, the terminating lines often receive increased demurrage charges, which tend to offset increased car hire charges.

Perhaps a brief word should be said about the contention that during a period of car surplus, a terminating railroad cannot earn per diem on freight cars which it may own because the Car Service Rules contemplate the loading of foreign cars for homeward movement in preference to the loading of a home car for off-line movement. This contention has little substance in fact, notwithstanding its theoretical plausibility. In the first place, Car Service Rule 1--the rule thus invoked--is somewhat ambiguous, and subject to interpretation, because the originating carrier is privileged to decide what constitutes a "suitable" car for off-line loading. More important, perhaps, is the fact that, according to recognized records, those railroads which invoke this argument somehow find a way to maintain a relatively low percentage of home-owned cars on their lines. In other words, the burdens of a car surplus are pretty well spread over all the railroads of the country, whereas the

burdens of a car shortage--which we have experienced more or less continuously for several years--are borne primarily by the originating railroads, including those which I represent.

It has also been suggested, by those railroads which benefit from low car rental charges, that an increase in such charges would tend to prolong the use of over-age equipment. Of course this argument presupposes an increase in the national car fleet, but if this desirable result should produce a car surplus, is it not obvious that the older cars would be retired first, and that the average age of the entire fleet would thus be reduced, exactly contrary to the specious argument thus advanced?

Finally, the arguments of those who would perpetuate the present injustice completely overlook the fact that if each railroad in the United States owned the cars which it ought to own to take care of its requirements, no serious national car shortage could occur, and, the level of car hire charges would become a factor of little importance. Each railroad ought to own the number of cars which it would need if the lading were transferred at the junction, or interchange point. The Interstate Commerce Commission has said that this is the joint legal obligation of the railroads (Huerfano Coal Co. v. C. & S. E. R.R. Co., 28 I.C.C. 502, 506). If each and every railroad would fulfill this obligation, serious car shortages would become far less frequent and no railroad would be burdened by relatively high car hire charges, because each carrier would earn--when one of its cars was used by another railroad--exactly the amount which it paid for the use of a foreign car. In other words, per diem debits and per diem credits would tend to offset each other. This is just another way of saying that any railroad which complains that car hire charges are too high, automatically convicts itself of inadequate car ownership, unwillingness to bear its share of the joint obligation above referred to, and a desire to continue the unjust practice of doing business on the investments of others.

After a generation of recurrent serious car shortages, which are becoming more frequent and more serious from year to year, is it not apparent that corrective action is long overdue? The I.C.C. and A.A.R. can avoid most of the adverse consequences of a car surplus, by appropriate orders or directives and, certainly, any problems connected with a car surplus are

no more serious than the problem of recurrent freight car shortages. In any case, is it not about time to solve the problem at hand, and meet other problems if and when they arise?

We believe that legislation like S. 886--if implemented by proper action of the I.C.C.--would discourage these unjust practices; encourage the construction and maintenance of an adequate national car supply; and promote the expeditious distribution, interchange, movement, and return of freight cars to their owners. Accordingly, and without reservation, we recommend its enactment.

S. 886 would authorize and direct the Commission to fix per diem charges upon any basis which in its judgment will "encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense." S. 886 would make it clear that the Commission, in carrying out the objectives thus stated, should not be frustrated by legal technicalities or lack of adequate statutory authority.

You will recall my earlier statement that these bills will accomplish their stated objectives "if implemented by proper action of the I.C.C." This is an important qualification which, it seems to me, completely nullifies the opposition to this legislation.

Most, if not all, of such opposition is based upon an assumption that if Congress tells the Commission it may consider all relevant factors in fixing per diem charges, the Commission automatically will take action which would be distasteful to the car user, or car renter, as distinguished from the car owner. Maybe so. Maybe not. The bill itself would not produce that result. If this occurs, it will come about only after a full hearing and investigation by the I.C.C., and a finding that the prescribed charges will tend to further the sound objectives stated in the bill.

Under these conditions, is it not obvious that anyone who opposes a Congressional statement of sound objectives, such as appears in S. 886, seeks thus to preserve a selfish advantage, and is afraid his position cannot stand investigation by an impartial tribunal.

Incidentally, and by way of support for the pending bills, I refer to the Code of Per Diem Rules

of the Association of American Railroads. A note appended to Rule 19 of that Code provides:

" * * * Generally as between the provident and improvident roads it must be recognized that if in time of great car demand the improvident road has to be assisted for the benefit of its patrons and its territory at the expense of the provident road, there must necessarily be set up some method of compensation for the provident road and this of necessity may go beyond mere car hire * * * ."

The principle also has been recognized by the Interstate Commerce Commission. In re Car Shortage, etc., 12 I.C.C. 561, it was pointed out that during times of great need the holder (of a freight car) "could earn perhaps ten times the amount that he would be compelled to pay by using the foreign car," and it was suggested that a rule might be adopted under which car rental charges per day might be increased "possibly fourfold during the latter half of the year, when cars are most needed."

These sound principles have been forgotten for many years, but they emphasize the importance of giving effect to the earning power, or value of the use, of a freight car, when per diem charges are fixed, and likewise emphasize the importance of a Congressional declaration in support of this principle which, in practical effect, is expressed in S. 886 and S. 1840.

In conclusion, I want to invite your attention to some facts which dramatically call for enactment of legislation of the type now before you. You know and I know that we have had recurrent freight car shortages for more than a generation, and that your constituents have appealed to you, year after year, for help in solving this problem. You know also, I think, that such appeals or complaints are exceedingly rare with respect to semi-trailers which, in the trucking industry, are the counterpart of the railroad freight car. Why is this so? The first reason is that although truckers may and do frequently interchange equipment, they are not required by law to do so, whereas the railroads must permit their freight cars to move beyond their lines, on other railroads, regardless of their wishes, their need for the equipment, or the rental which they receive for use of their cars by other railroads. In times of heavy business a trucker can maintain complete control over all of his equipment, refuse to part with

its possession, and thus preserve to himself and his patrons the use of equipment which is far more valuable, under such conditions, than any "reasonable" rental. The railroads cannot do this. We can put a valuable freight car into service today, and never see it again for months or even years, and, meanwhile, it will earn for other railroads from four to ten times the amount of rental which they pay to the owner.

More important, perhaps, is the fact that a new railroad freight car costs today approximately \$10,000, and, once it leaves the lines of its owner, can be "taken" by other railroads for a pittance of \$2.88 per day. On the other hand, a new truck semi-trailer can be bought for about \$6,500 and, if the owner chooses to let it go beyond his lines, he receives as rental, generally, \$8 per day. In other words, for a trailer which is worth substantially less than a freight car, the owner-trucker receives in daily rental almost three times as much as the owner-railroad and--if he chooses to do so--he can keep his equipment for his own use at all times.

Here, in a few words, is a reason why we have a continuing adequate national supply of highway trailers, and a continuing inadequate supply of railroad freight cars. Here, also, is one of the most powerful arguments which can be advanced in support of bills like S. 886, which would authorize the Commission to give effect to such facts in fixing the level of railroad per diem charges.

Incidentally, I want to mention briefly a few further developments which have occurred since your consideration of an identical bill (S. 1789) in the 86th Congress.

First, the so-called Doyle Committee, under the auspices of this Committee, on January 3, 1961, released a report which in Part VII, Chapter 13, discusses the "national rail freight car problem," and refers to S. 1789 as a bill "to permit the Commission to take proper cognizance of the effects of car rental rates upon car supply." This report then says:

"It is to be hoped that it will be re-introduced and enacted during the 87th Congress as part of the overall attack on the freight car problem."

Second, on April 8, 1961, the American Steel Foundries, Inc., announced the closing of its railway equipment plants at Alliance, Ohio, and Granite City, Illinois, because of "a lack of orders from railroads for new freight cars." This is another symptom of the disease which has infected railroad car shops as well as the plants of commercial car builders. I referred earlier to the fact that almost 10 per cent of the seriously depleted car fleet is out of service or "bad order." Apparently freight car ownership has become so unattractive, as an investment, that it is not even worth while to give "heavy" repairs to cars which, if returned to service, could earn only \$2.88 per day.

In any event, the lack of incentive for construction or purchase of new cars, and for "heavy" or costly repairs to "bad order" equipment, has had a tragic effect upon employment in the shop crafts of the railroad industry. During 1945, an average of 387,373 railroad employees were working in Group IV Maintenance of Equipment, etc., as classified by the I.C.C. in its mid-month count Statement M-300. This includes men in railroad car shops engaged in new car construction. In February, 1961, this figure was down to 164,650 employees, only 42.5 per cent of the 1945 employment in this category.

We think enactment of S. 886 ultimately would put many of these men back to work.

Finally, you will recall that, during the 1959 hearings, the Association of American Railroads appointed a committee of executives to study this freight car problem, and asked your Committee to defer action on the bill (S. 1789) then pending. This action was construed by some as an expression of opposition to the bill by the A.A.R.

The A.A.R. special committee was discharged early this year, and a formal resolution was adopted by the A.A.R. Board--

"That the Association of American Railroads refrain from participation in any legislative activity respecting per diem."

The significance of these developments will be apparent to your Committee. The abortive efforts of the A.A.R. emphasize the importance of action by this Committee

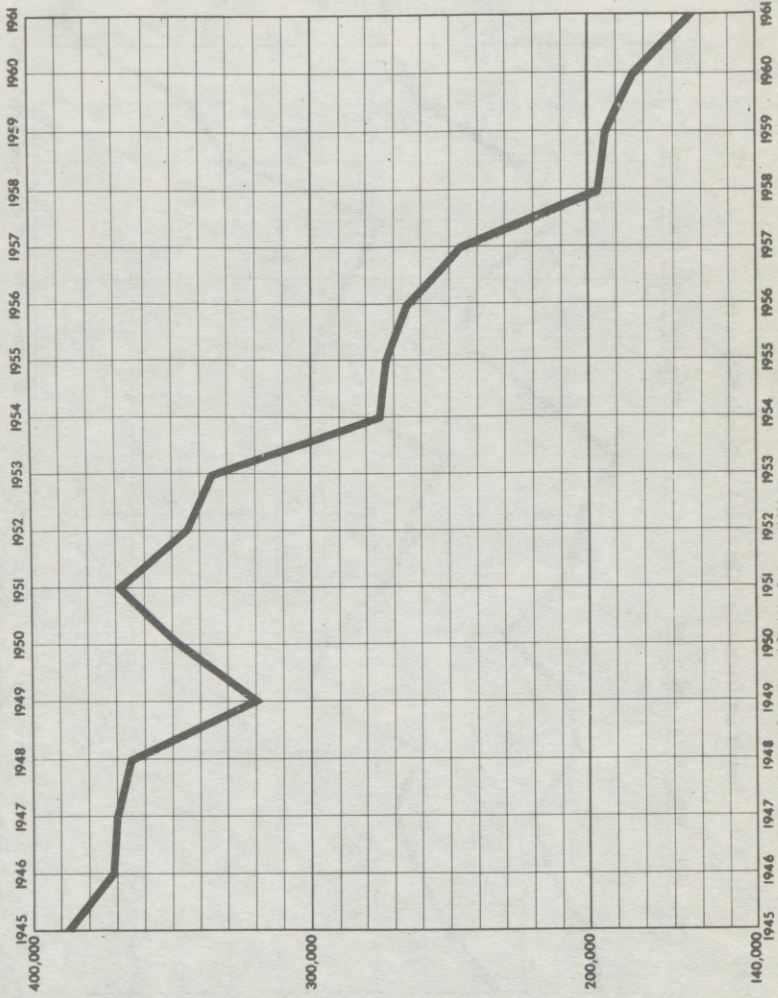
and the Congress, to the end that the I.C.C. may attack the problem as an impartial tribunal, unhampered by selfish interests and legalistic concepts. And it is now abundantly clear that the A.A.R. is no longer (if it ever was) opposed to this sound and constructive legislation.

The railroads which I represent urge this Committee promptly to submit a favorable report on S. 886 (or S. 1840) and thus serve notice on the I.C.C., and all interested parties, that freight car rentals should be established upon a level which "will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense"; and make it clear that the Commission, in exercising this important responsibility, shall be free to consider any and all relevant facts.

* * *
* *
*

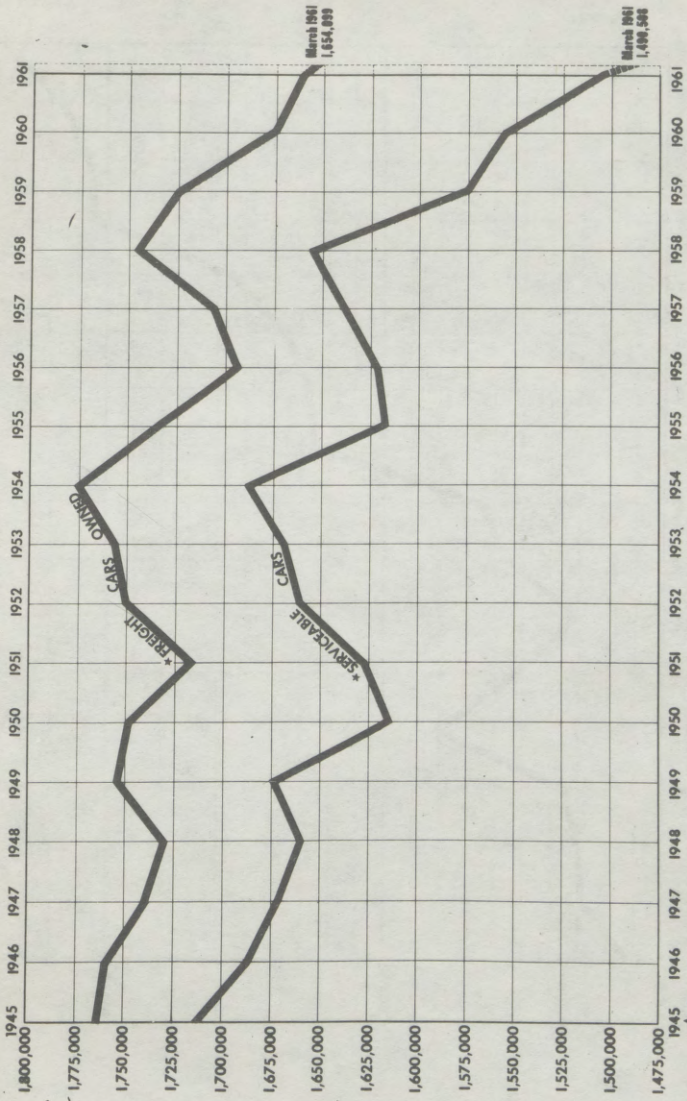
Class I U. S. Railroads 1945 to 1961 Incl.

Group IV Employs Maintenance of Equipment and Stores



Source: I. C. Bureau of Transport Economics and Statistics Statement W 300

Freight Car Ownership Class I U.S. Railroads 1945 to 1961 Incl.



★ Source Car Service Division Association of American Railroads Form CS-60A

Mr. LEILICH. Senator, may I ask that the record show that the statement of Mr. George N. Leilich, vice president of the Western Maryland Railway is received and made a part of the record.

Senator PASTORE. It is so ordered. We have a statement from Senator Carl T. Curtis that will be inserted in the record at this point. (The statement follows:)

U.S. SENATE,
Washington, D.C., June 13, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR WARREN: Thank you for your letter advising me of the hearings on S. 886 of which I am a cosponsor. I will not be able to appear in connection with the hearings, however, I would like to submit a statement for the record. It is herewith inclosed.

Thanking you, I am,
Sincerely yours,

CARL T. CURTIS, U.S. Senator.

STATEMENT OF SENATOR CARL T. CURTIS OF NEBRASKA BEFORE THE SENATE
COMMITTEE ON COMMERCE WITH REFERENCE TO S. 886

Mr. Chairman, I am appearing today in support of S. 886 which proposes to amend the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply. I have appeared before the committee on a number of other occasions in support of legislation with the same objective.

The situation this year is even more acute than in the past. Even though the railroads operating in Nebraska have earnestly attempted to maintain an adequate supply of rolling stock, each year during periods of peak car loadings, we are plagued with car shortages because cars owned by the western roads are in use on lines elsewhere. Telegrams flood my office stressing the urgent and immediate need for freight cars.

Many railroads have found it more economical to pay the existing per diem rate for use of another road's cars than maintain an adequate supply for their own requirements. The problem continues to grow and become more critical.

At the present time railroad cars are being retired from service at a rate exceeding the construction of new cars. This alarming fact coupled with our bountiful grain supply means that remedial action now is even more necessary than it has been in the past. I urge favorable consideration by the committee and early enactment of this legislation.

STATEMENT OF W. J. HICKEY, VICE PRESIDENT AND GENERAL
COUNSEL, AMERICAN SHORT LINE RAILROAD ASSOCIATION,
WASHINGTON, D.C.

Mr. HICKEY. Mr. Chairman, my name is W. J. Hickey.

Time was given me yesterday and I was not able to be here. I have a prepared statement, and under the circumstances, I have no desire to hold you any longer. On the other hand, if you would like a few explanatory remarks, I will be glad to say.

Senator PASTORE. Let's put the statement in the record. I will have the staff read it and I will review it, and if we have any clarifying questions we will submit them to you for the record.

Mr. HICKEY. Thank you, Mr. Chairman.

Just for the record I do appear for the American Short Line Railroad Association and its 264 members who oppose these bills.

Senator PASTORE. Thank you.

(Mr. Hickey's statement follows:)

STATEMENT BEFORE THE SUBCOMMITTEE ON FREIGHT CAR SHORTAGE IN OPPOSITION
TO S. 886 AND S. 1840

My name is W. J. Hickey and I am a lawyer with an office at 2000 Massachusetts Avenue NW., Washington, D.C. I have been vice president and general counsel of the American Short Line Railroad Association since January 1, 1954. For a period of 5 years prior thereto I was employed by the Department of Justice and assigned responsibility for defending in the courts transportation cases filed against the Federal Government and various regulatory agencies.

The American Short Line Railroad Association is a nonprofit unincorporated association of 264 common carriers by rail, representing an investment of just under \$2 billion and operating almost 17,000 miles of track. During 1959 they earned gross revenues in the amount of \$587 million, employed approximately 53,000 persons, paid approximately \$305 million in wages and paid taxes approximating \$75 million.

During the 47th annual meeting of the member railroads at Green Bay, Wis., on October 5, 1960, legislative policies were adopted with respect to numerous subjects, including strong opposition to penalty per diem or the inclusion in per diem calculations of amounts in excess of adequate compensation. Accordingly, I am appearing here at the instruction of these member lines, in opposition to S. 886 and S. 1840. Based on my own experience, which has included participation in per diem rate proceedings before the Interstate Commerce Commission and the courts, I am in full agreement with the position of our member lines that passage of either of these bills would not be in the public interest.

When considering legislation of this type, it is first necessary that there be full understanding and appreciation of the basic characteristics of the fully integrated rail transportation system in the United States. Anyone, anywhere, at any time, may load and forward a car originating on any railroad at any point in the United States to any other railroad, usually using one or more carriers intermediate in the route. Normally such car moves without transfer of lading until the consignee unloads the shipment. This practice is economically sound and is required by regulation. The shipper and consignee are wholly unconcerned about who furnishes the car, who participates in the freight rate, or how intercompany transactions are completed, including freight car repairs, car rental and claim payments.

This subcommittee held hearings on a series of bills of a similar nature—S. 1789, S. 1811 and S. 1822, introduced in the 86th Congress, and on June 8, 1959, Mr. J. M. Hood, former president of the Association, testified in opposition thereto. The two bills being considered today are identical to S. 1789 of the 86th Congress and the views of Mr. Hood as set forth in the printed hearings are equally applicable today.

The comprehensive report (No. 452) issued by the full committee in reporting favorably on the earlier bills, eliminates to some extent the need for extended comment as to the nature and operation of the freight car "per diem rate" utilized in recent years as a method by which railroads reimburse each other for the use of freight cars other than their own. However, some of the conclusions made in the report appear to be unsound in the opinion of those of us opposing these bills, and to the extent the previous record was deficient

in proving our case, we undertake this further effort by appearing in these hearings.

It seems apparent, however, that some progress has been made since the 1959 hearings in clarifying the thinking of those primarily interested in the subject matter of these bills. This is evidenced by the fact that the Commission is not now pressing for enactment of a bill that would authorize it to assess "penalty" charges in addition to the "per diem" reimbursement of car ownership costs. It may be that the Commission has concluded as some of us urged in the past, that the existing provisions of sections 1(14) and 1(15) of the Interstate Commerce Act clothe it with sufficient power to cause the expeditious movement of cars to areas where they are needed. As encouraging as that may be to us appearing in opposition to the current bills, it is evident that our views have not been sufficiently persuasive to cause the Commission to abandon the effort to add to its authority the right to direct the payment of additional amounts to car rental ownership costs as a means of offering a so-called incentive to the railroads to add to their freight car supply. The Commission still supports this type of proposed legislation despite the fact that our previous testimony disclosed that it has possessed for a number of years statutory power without utilizing the procedure of the freight car per diem rate to cause attainment of the objectives sought.

For the convenience of the subcommittee, I have included as an attachment (exhibit A) to this statement a reproduction of the text of the so-called car service provisions of the Interstate Commerce Act as set forth in section 1, paragraphs (10), (14), and (15). It is submitted that a reading of these paragraphs clearly discloses the Commission possesses, and has since 1916, the power to regulate the supply of freight cars and arrange for their expeditious movement. In the course of testimony on bills of similar nature introduced in previous Congresses, spokesmen for the Commission have stated that if bills of this type were enacted they would immediately embark on a study program to determine which railroads of the country were deficient in the matter of car supply and arrange to have such deficiencies eliminated either by the procedure of strong "suggestion" or the imposition of penalties. Those of us who oppose the Commission's views invite attention to the fact that the above-cited car service provisions of the act already authorize the Commission to act in the same fashion and appropriate fines are set forth in the act for failure to comply with an order of this nature by the Commission. We, therefore, view with a great deal of apprehension the persistent effort of the Commission to experiment in this matter of freight car supply through the mechanism of very technical procedure of the freight car per diem rate without attempting to use its present broad powers.

With all due respect for the informed judgment of the Commission, it would appear that it has become enamoured of a rather catchy phrase often repeated to the effect "that some railroads find it cheaper to rent rather than purchase freight cars of their own." Part of my effort in this statement will be to attempt to show that any railroad possessing the funds to purchase and utilize cars of its own will find it "cheaper" to do so rather than pay the current per diem rate of \$2.88. We tend to believe that if questioned, the Commission would be quick to agree that the railroads of this country could not operate efficiently nor economically unless some railroads rented rather than purchased cars of their own. As to this last point, this subcommittee, in prior hearings, has had the benefit of the views of such prominent railroad officials as Mr. James M. Symes, chairman of the Pennsylvania Railroad, and Mr. P. B. McGinnis, president of the Boston & Maine Railroad, and it can be expected that these eminently qualified

gentlemen when testifying before this subcommittee again will express their views as to the necessity for certain operating practices within the railroad industry.

An equally often-repeated and colorful phrase voiced by those few railroads of the country supporting this legislation is that the freight car per diem rate has consistently been insufficient in amount to other than cover "the bare-bones cost of ownership." In this regard the full committee in its report to accompany S. 1789 of the 86th Congress, stated that even though there was apparent disagreement as to the adequacy of the per diem rate, the committee was convinced "that the current charge of \$2.75 provides no profit for the car owner, over and above the 'bare-bones cost of ownership,' if indeed it is sufficient for that purpose * * *."

The testimony in opposition to bills of this type historically has stressed the fact that the composition of the elements of cost entering into the computation of a reasonable freight car rental rate are extreme complex, and it has been repeatedly urged that the per diem rate should not be further confused by the addition of so-called penalties or incentives.

As of this date the Commission is in the process of assimilating reports submitted by all class I railroads over the period of the last 12 or 15 months in an attempt to eliminate the ever-enduring dispute as to the quantum of the rate. This investigation has been undertaken by the Commission with due regard for the instructions of the Federal courts in remanding to it for further study a report and order in which the Commission had found just and reasonable a freight car per diem rate effective in 1953 in the amount of \$2.40 and calculated by the railroads on a somewhat similar basis to that used in the computation of the succeeding rate of \$2.75 and the now current rate of \$2.88. It is therefore not surprising to find that of the approximate total of 550 railroads of this country, only about 14 favor the "tampering" with the car rental rate procedure by the addition thereto of elements extraneous to its specific purpose.

As stated earlier herein, it is not my purpose to repeat testimony heretofore presented by those who appeared in opposition to bills of this type, nor comment on those aspects which can be expected to be presented by Messrs. Symes and McGinnis. I do wish, however, to urge the subcommittee's review of exhibits B and C to my prepared statement, which I submit should clearly reveal to the objective mind the fact that there is and has been for a number of years a handsome profit being realized by those railroads fortunate enough to be able to own freight cars and move them off of their lines.

Exhibits B and C are reproductions of two of the actual pages of the "cost" calculation used by the railroads to establish the current per diem rate of \$2.88. It is unfortunate, but true, that it is impossible to fully understand the nature of the freight car per diem rate unless you analyze statements of such apparent complexity. Yet, it is respectfully submitted that this subcommittee cannot be convinced one way or the other as to just what "bare-bones" are covered unless it carefully reviews and understands the elements that entered into its computation.

For my purposes, and in a desire to simplify the task as much as possible, I will invite the subcommittee's attention only to two of the "cost" elements which together account for \$1.52 of the rate of \$2.88 per car per day. These items are "interest" and "depreciation." Interest is included in the calculation to supply the return on investment, or profit to the car owner because of the funds he has invested by purchase of the car. Depreciation is included in the computation to return to the car owner annually that portion of his investment expended each year by use of the freight car. Depreciation of freight

cars in accordance with regulations of the ICC and Internal Revenue Service is to be over a period of 30 years. The railroads have used a 6-percent interest rate as a reasonable annual return on investment.

Exhibit C discloses that as of January 1, 1959:

(1) Line 3—there were 1,743,484 freight cars owned or leased by all class I railroads;

(2) Line 15—these cars cost the railroads \$7,199,468,315;

(3) Line 16—these cars had a depreciation basis of \$6,365,261,907;

(4) Line 17—that in the year 1958 the owning railroads were permitted by law to charge to operating expenses 3.09 percent (one portion of their 30-year life) of the base in (3) above, or depreciation in the amount of \$196,684,649; and

(5) not disclosed, but indicated by other calculations (line 8 times line 15), is that the depreciated value, or current book value of the freight car fleet as of January 1, 1959, was slightly under \$4 billion.

It is to be stressed that the above items are sufficient to enable calculation of the proper amount of interest—6 percent times \$4 billion—to provide the return on the current investment in the freight car fleet, and the legal depreciation deduction is specifically set forth.

However, we note exhibit C furnishes additional "cost" elements or adjustments which we will learn were "substituted" for the interest and depreciation amounts included in the calculation.

(6) Line 6—as explained, is the estimated average cost of "reproducing in kind" each of the cars in the fleet—a figure of \$7,887.

(7) Not shown but capable of calculation (line 15 divided by line 3) is that each of the cars had an average original cost of \$4,133.

(8) Line 10—thus is shown to represent the estimated cost of all cars if "reproduced in kind" or if purchased new as of January 1, 1959, as cost of \$13,750,858,000.

(9) Line 13—is represented to be the depreciated value of such cars "reproduced in kind," or if they had been purchased at current prices as of January 1, 1959, a figure of \$7,631,726,000.

Turning to exhibit B, we note (line 12, col. (d)) that interest or return on investment, instead of being included at \$240 million, by applying 6 percent of \$4 billion, the actual depreciated value of the car fleet, has been computed at 6 percent of depreciated reproduction value, an inflation of their value by \$3,631,726,000, or over \$3.5 billion, resulting in the inclusion of the amount of almost \$458 million, an addition to the "ownership" costs of \$218 million.

We also note (line 16, col. (d)) that for depreciation, almost \$425 million has been included rather than the legal deduction permitted of almost \$197 million, an inflation of but \$228 million.

As stated earlier, these two items account for \$1.52 of the total \$2.88 per diem rate established effective December 1, 1959.

If the actual "bare-bones cost of ownership" only had been included the total would have been put 75 or 77 cents less than the \$1.52 included, and the \$2.88 rate would have been \$2.11.

Thus, when the proponents of the bills urge the use of an "incentive," we wonder just what amount they have in mind is necessary to make it "profitable" to own freight cars.

We respectfully submit that the above explanation is clear cut and dramatically shows that there is convincing proof, without consideration of the other elements of the cost study receiving similar treatment, that amounts greatly in excess

of ownership costs are and have been received by the car owner through the established per diem rates.

It is strikingly dramatic but mathematically accurate to thus determine by resort to other elements on exhibit B just what the inclusion of this additional amount of 77 cents over and above legal depreciation and a reasonable interest return of 6 percent on actual investment (compare the less than 3 percent on total railroad investment earned by all the railroads for the year 1960) results in the way of "incentive" to the car owners. It will be noted that the \$2.88 rate is paid on each car for each day of active use. For this purpose line 8 of exhibit B shows that there were 579,865,344 active car-days in the year 1958. Thus:

$$\begin{array}{r}
 \$579,865,344 \\
 \times .77 \\
 \hline
 4,059,057,408 \\
 4,059,057,408 \\
 \hline
 446,496,314.88
 \end{array}$$

It is realized that the "adjustment" made over "actual costs" resulted in returning to the car owners almost \$446.5 million just for the year 1958. This tidy sum will purchase quite a few new cars, and furnishes, in my opinion quite an "incentive."

I have no intention of contesting the reasonableness of the current and past per diem rates before this honorable committee—there are other forums now so concerned—but I respectfully suggest there is more substance than the subcommittee in 1959 apparently found to justify our contention that an increase, or additional profit element, added to the per diem rate will not encourage additions to the freight car fleet.

In determining the public interest involved in the proposed legislation the subcommittee should also consider the effect which these bills, if enacted, could have on the railroad industry.

Enough has been placed in the record in these hearings and those on earlier similar bills to show that all railroads must accept and move over their lines in accordance with waybill instructions accompanying each car all freight cars, independent of their ownership, tendered by their connections. This enforced use—mutually imposed on all railroads—has been the basic and historic reason for the premise consistently stressed by the courts, the ICC, and the railroads, that the per diem rate should return 1 day's car ownership costs and no more. It is evident therefore that if any additional profit element is added to the rate, the result is to penalize the user and unjustly enrich the car-owning railroad which circumstance—geographic location or as the originating carrier of commodities in demand—at any one time has favored. The American way of life, not to mention the various protective laws enacted, has been consistently to oppose the unreasonable exercise of power by those in a monopoly position.

There are over 200 railroads who own no freight cars. There are approximately but 50 railroads which enjoy an excess of per diem receipts over per diem payments. By reason of their location, length of haul, size, etc., a majority of the railroads of this country could never realize an excess of per diem receipts over payments even were they able to purchase additional cars. Thus any additional cost of freight car per diem would further endanger the stability of the railroad industry.

It is the hope of our member lines that favorable action will not be taken on these bills.

EXHIBIT A

CAR SERVICE PROVISIONS OF THE INTERSTATE COMMERCE ACT

Section 1. * * *

(10) The term "car service" in this part shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this part.

* * * * *

(14) (a) The Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this part, including the compensation to be paid and other terms of any contract, agreement, or arrangement for the use of any locomotive, car, or other vehicle not owned by the carrier using it (and whether or not owned by another carrier), and the penalties or other sanctions for nonobservance of such rules, regulations, or practices.

(b) Omitted.

* * * * *

(15) Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) To suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable;

(c) (d) Omitted.

FREIGHT CAR SHORTAGE

EXHIBIT B

Summary of freight car ownership cost for per diem rate purposes, class I railroads, calendar year 1958 (average 5-year car repair basis)

Item	Sheet references (b)	Summary basic data (c)	Annual cost		
			Amount (d)	Per active car-day (cents)	
				Basis A (see note) (e)	Basis B (see note) (f)
1. Number of freight cars owned or leased (including cabooses):					
2. As of Jan. 1, 1958.....		1,765,336			
3. As of Dec. 31, 1958.....		1,753,484			
4. Average, 2 counts.....		1,759,410			
5. Freight car utilization ratio.....	Sheet No. 12, col. 5	332.39			
6. Active car-days per car year (365 times item 5).....					
7. Car-day divisor:					
8. For interest return and depreciation on freight cars (3 times 6).....		579,865,344			
9. For all other annual costs (4 times 6).....		583,499,222			
10. Annual costs, assigned and apportioned to freight car ownership:					
Interest on depreciated reproduction value of freight cars:					
Basis A, replacement in kind.....	Sheet No. 1, line 20	\$7,631,726,000 times 6 percent.....	\$457,903,560	\$78.967	\$94.987
Basis B, modern type car replacement.....	Sheet No. 1, line 21	\$9,179,940,000 times 6 percent.....	550,796,400		
14. Interest on apportioned value of freight car repair facilities:					
Depreciated reproduction value, replacement in kind.....	Sheet No. 2, line 12, col. c	\$658,344,210 times 6 percent.....	39,500,653	6.770	6.770
16. Annual depreciation on undepreciated reproduction value of car equipment:					
Basis A, replacement in kind.....	Sheet No. 1, line 23	\$13,750,853,000 times 3.09 percent.....	424,901,512	73.276	
17. Basis B, modern type car replacement.....	Sheet No. 1, line 24	\$16,540,433,000 times 3.09 percent.....	511,099,380		88.141
18.					

	Sheet No. 2, line 11, col. a...	\$441,158,386 times applicable rates	8,469,314	1.451	1.451
19. Annual depreciation on apportioned value of freight car repair facilities:					
20. Underpriced ledger value (original cost).....					
21. Total cost of interest and depreciation on cars and repair facilities:					
Basis A (12+15+17+20).....					191.349
Basis B (13+15+18+20).....					
24. Apportionment of taxes (other than Federal income taxes):					
Property and ad valorem taxes.....	Sheet No. 3, lines d+10.....		85,804,238	14.705	14.705
Payroll taxes.....	Sheet No. 3, line 27.....		19,668,274	3.371	3.371
27. Total taxes.....	Sheet No. 3, line 31.....		105,472,512	18.076	18.076
28. Freight train car repairs.....	Sheet No. 4,2, line 11, col. a.....		499,176,923	85.549	85.549
29. Apportionment of maintenance of repair facilities.....	Sheet No. 7, line 20.....		20,111,891	3.447	3.447
30. Apportionment of miscellaneous maintenance of equipment accounts.....	Sheet No. 8, line 10.....		45,182,042	7.743	7.743
31. Deadhead haul cost of repair material.....	Sheet No. 9, line 18.....		14,154,550	2.426	2.426
32. Interest on stock of repair material.....	Sheet No. 9, line 23.....		3,503,601	.600	.600
33. Interest on working capital (payrolls).....	Sheet No. 9, line 32.....		3,068,373	.526	.526
34. Apportionment of general expense.....	Sheet No. 10, line 17.....		29,536,431	5.062	5.062
35. Total ownership cost calendar year 1958 (excluding Federal income taxes):					314.778
36. Added cost of labor, materials, and payroll taxes to reflect current cost levels.	Sheet No. 11, line 40.....		23,611,494	4.047	4.047
37. Total car ownership cost, including added cost to reflect current cost levels (excluding Federal income taxes):					318.825

NOTE.—Basis A represents reproduction cost of cars new, as of Dec. 31, 1958, based on replacement in kind; basis B represents reproduction cost at prices as of Dec. 31, 1958, for latest type of cars currently being purchased.

EXHIBIT C

Freight car ownership cost, calendar year 1958, interest and depreciation on freight car value

Item	Amount
1. Number of freight train cars owned or leased, year 1958:	
2. Beginning of year.....	1,765,336
3. End of year.....	1,743,484
4. Reproduction cost new, Dec. 31, 1958, ICC Bureau of Accounts, Cost Finding, and Valuation (see note):	
5. Average per car undepreciated:	
6. Basis A.....	\$7,887
7. Basis B.....	\$9,487
8. Condition percentage.....	55.5
9. Aggregate cost undepreciated:	
10. Basis A (3×6).....	\$13,750,858,000
11. Basis B (3×7).....	\$16,540,433,000
12. Aggregate cost depreciated:	
13. Basis A (8×10).....	\$7,631,726,000
14. Basis B (8×11).....	\$9,179,940,000
15. Ledger value undepreciated, Dec. 31, 1958.....	\$7,199,468,315
16. Depreciation base, close of year 1958.....	\$6,365,261,907
17. Depreciation charged to operating expense, year 1958.....	\$196,684,649
18. Annual composite rate (17÷16) (percent).....	3.09
19. Annual interest return on car value:	
20. Basis A (6 percent of item 13).....	\$457,903,560
21. Basis B (6 percent of item 14).....	\$550,796,400
22. Annual depreciation allowance on car value:	
23. Basis A (10×18).....	\$424,901,512
24. Basis B (11×18).....	\$511,099,380

NOTE.—Basis A represents reproduction cost new based on replacement in kind; basis B represents reproduction cost for latest types of cars currently being purchased.

Senator SMATHERS. I want to insert in the record at this point the telegram from the Florida Railroad and Public Utility Commission supporting S. 886, so that the committee will have the benefit of our commission's thinking on these matters.

Senator PASTORE. Without objection that will be done.
(The telegram referred to follows:)

TALLAHASSEE, FLA., June 6, 1961.

Hon. GEORGE SMATHERS,
U.S. Senator,
Washington, D.C.:

This commission requests that you give favorable consideration to Senate bill No. 886 known as the car shortage per diem bill. We believe that this bill would alleviate the railroad car shortage.

BOLLING C. STANLEY,
Executive Secretary, Florida Railroad and Public Utility Commission.

Senator PASTORE. The committee is now adjourned.
(Whereupon, at 12:40 p.m., the committee was adjourned.)
(The following communications were subsequently submitted for the record:)

STATEMENT BY SENATOR JOHN A. CARROLL BEFORE SENATE COMMERCE
COMMITTEE ON S. 886

Mr. Chairman, I am pleased today to add my support to S. 886, a bill designed to insure the adequacy of the national freight car supply.

This proposal, recommended by Interstate Commerce Commission, has the sponsorship of over 30 Senators.

For decades the problem caused by shortages of freight cars during critical harvest periods has plagued our country. This shortage is in large part due to the fact that car rentals are kept by law at such a low level that there is no incentive for car ownership.

This problem will continue to plague us until provision is made for a just compensation to freight car owners for car use.

S. 886 gives the Interstate Commerce Commission the authority to determine a "just and reasonable compensation to freight car owners," one that will "contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

The present rental of \$2.88 a day for the use of a car, the cost of which may be \$10,000 or more, is so low that it tends to discourage the purchase of adequate numbers of freight cars. It is cheaper to rent than to buy—with the result that the ownership of usable freight cars is now lower than it has been in 40 years.

Western railroads have a larger supply of cars than do eastern lines. Over the years these cars tend to move eastward, carrying supplies to the heavy population markets. With the arrival of harvest time it is difficult—at times even impossible—to obtain an adequate supply of freight cars to handle the western harvest. As a consequence, grain, sugarbeets and other crops lie on the ground while Senators and Congressmen desperately try to obtain cars from eastern railroads.

I am sure the committee will agree that the interests of both commerce and national defense require that means be found to insure adequate numbers of freight cars in good and operational condition.

S. 866 will give the Interstate Commerce Commission the authority to allow freight car per diem charges to reflect more accurately the value of the car. Thus, through a more normal market procedure, it is expected that the supply of rolling stock will increase to meet the demand.

I am confident this committee, which has long been concerned with this pressing problem, will give careful study to, and report favorably upon, S. 886.

STATEMENT OF SENATOR WAYNE MORSE BEFORE SUBCOMMITTEE ON THE FREIGHT CAR SHORTAGE, ON S. 886 AND S. 1840

These bills, the wording of which is identical, in order to insure the adequacy of the national railroad freight car supply, would add a new sentence to section 1(14)(a) of the Interstate Commerce Act to require the Interstate Commerce Commission in fixing the compensation to be paid by one railroad to another for the use of freight cars to give consideration to the level of freight car ownership and to other factors affecting the adequacy of the national freight car supply.

The Commission would be allowed to determine whether compensation for freight car use should be computed on the basis of elements of ownership expense involved in owning and maintaining freight cars, including fair return on value, which return would be fixed at such level as in the Commission's judgment would encourage the acquisition and maintenance of an adequate freight car fleet. Or the Commission could determine whether such compensation should be computed on the basis of elements reflecting the value of use of freight cars, or upon such other basis or combination of bases as in the Commission's judgment would provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

The passage of this sort of legislation has been recommended by the Interstate Commerce Commission each year for several years. Such legislation is necessary because a three-judge district court in *Palmer v. United States*, 75 F. Supp. 63 (1947), held that the use of the word "compensation" in section 1(14)(a) of the Interstate Commerce Act, which authorizes the ICC to fix reasonable compensation for the use of cars, precluded the Commission from establishing a per diem charge in excess of any purported reasonable compensation to the railroad owning freight cars. That is, per diem charges paid by one railroad to another are not allowed to exceed the bare cost of ownership of freight cars.

These bills would change this situation and would allow the ICC to establish per diem rates that would encourage the acquisition of equipment. At the present time it is cheaper for a railroad to pay per diem charges for the use of another railroad's equipment than it is to purchase freight cars. This has been one of the main factors for the continual decline in freight car ownership of the railroads of the United States.

The following table indicates a downward trend in freight car ownership and control by class I railroads, and in freight cars ordered and installed since 1949, including railroad owned or controlled refrigerator cars:

Year	Freight-car ownership (as of Jan. 1)	Freight cars ordered	Freight cars retired	New freight cars installed
1949	1,838,689	6,223	90,348	84,669
1950	1,833,010	155,732	76,179	42,067
1951	1,798,898	92,231	53,028	87,727
1952	1,833,597	34,369	62,240	67,420
1953	1,838,777	33,565	50,123	69,394
1954	1,858,048	21,976	71,858	30,562
1955	1,816,752	166,603	73,491	37,509
1956	1,774,616	41,794	49,853	61,615
1957	1,786,376	46,063	54,363	92,590
1958	1,824,603	17,518	65,005	41,172
1959	1,800,770	56,489	93,690	42,024
1960	1,749,104	36,368	70,335	49,227
As of May 1, 1961	1,710,869	6,711	28,841	11,714

The declining ownership in railroad freight cars shown by this table presents a serious situation. Despite the rapid growth of population and economic activity in the country, the railroad freight car supply is constantly dwindling. Encouragement offered by this legislation should be given to railroads to acquire and maintain a growing supply of freight cars to allow them to offer adequate service and thus regain traffic they need so desperately. In recent years, because of depression conditions, freight car shortages have not been acute, although from time to time there have been shortages of certain types of freight cars used by shippers in the Pacific Northwest.

The freight car situation as it is presented by many western railroads is something along this line: the western railroads build freight cars, load them with freight destined for the highly industrialized eastern territory, and sometimes do not receive such cars back again on their lines until these cars are in need of substantial repairs. The western railroads accordingly state that each railroad should maintain its share of the freight cars necessary to haul the Nation's freight. The eastern railroads, on the other hand, state that the originating carrier should furnish equipment sufficient to care for movement and termination of the originating railroad's freight. Further, the western railroads claim that once their freight cars are in eastern territory they are not returned promptly but are used to transport freight in the eastern portion of the United States.

At any rate, certain railroads now find it more economical to "rent" cars of other lines rather than purchase or maintain in good order freight cars of which they are the owners. The proposed legislation would allow the ICC to establish per diem rates that would encourage ownership rather than rental of freight cars.

For this reason, I urge that the Commerce Committee report favorably on this legislation. Enactment of this proposed legislation would go a long way to encourage an adequate freight car supply essential to the commerce of the country and to national defense.

STATEMENT ON BEHALF OF THE NATIONAL ASSOCIATION OF RAILROAD AND UTILITIES COMMISSIONERS, BEFORE THE SPECIAL SUBCOMMITTEE OF THE SENATE COMMITTEE ON COMMERCE IN SUPPORT OF S. 886 AND S. 1840

The National Association of Railroad and Utilities Commissioners is a voluntary organization embracing within its membership the members of the railroad and public utility regulatory commissions and boards of the several States of the United States. The Federal regulatory commissions, the ICC, the FCC, the FPC, the SEC, and the CAB are also members of the association but on matters of legislation the association does not presume or attempt to speak for these Federal agencies. This statement is on behalf of the State commission members of the association.

One of the most vexing, costly, and serious problems in railroad transportation today is the problem of inadequate freight car supply. The size of the Nation's railroad freight car fleet has been steadily decreasing over the years. The problem had become one of such serious proportions, that the NARUC in 1955 established a special committee to study the matter. The committee, since that time, has been actively engaged in its study, directed toward accomplishing two objectives: (1) An increase in the Nation's freight car supply through the building of new and additional cars, and (2) the maximum utilization of the existing car supply.

In line with these efforts, the committee recommended and the executive committee of the NARUC endorsed the enactment of so-called per diem legislation as far back as the 85th Congress. At a regular meeting of the executive committee of the association held in Washington, D.C., on February 28, 1957, the following resolution was duly adopted:

"RESOLUTION RELATING TO S. 942 AND H.R. 3626, 85TH CONGRESS

"Whereas there has been introduced in the 85th Congress legislation to amend the Interstate Commerce Act, so as to aid in alleviating shortages of railroad freight cars during periods of emergency or threatened emergency by authorizing the Interstate Commerce Commission to promote the expeditious movement, distribution, and interchange or return of freight cars: Now, therefore, be it

Resolved, That the executive committee of the National Association of Railroad and Utilities Commissioners hereby records its support of the objectives of such legislation; and

Resolved further, That the legal representatives of the association are hereby authorized to present the views of the association to the appropriate committees of the Congress on such legislation or any similar bills designed to accomplish the same objective; namely, to help alleviate shortages of railroad freight cars."

This support has continued in subsequent Congresses and has been reiterated annually in the reports of our special committee to study railroad car shortages. For your information there is attached hereto a copy of the report of our committee to the 1960 convention of the NARUC.

Each of these bills, S. 886 and S. 1840, is aimed at the same objective; namely, to help alleviate shortages of railroad freight cars, and this objective is heartily endorsed by the NARUC.

While such an endorsement is a serious step, it appears to be a reasonable and necessary one in light of the adverse economic impact resulting from the periodic crises in freight car supply. The inability of shippers to secure freight cars results in reduced production and payrolls, increased inventories causing greater costs and postponed or canceled expansion programs. While this total loss cannot be fully determined, it does nevertheless clearly emphasize the serious and stifling effect that the freight car shortage has on the economy in some areas of the United States. The areas most distressed are in those States economically concerned with the transportation facilities available for grain, cotton, lumber, and coal shipments, and the shipment of commodities requiring refrigeration cars.

Furthermore, and perhaps paramount, is the question of what would happen to our defense effort in the event of another full scale war emergency if the Nation's railroads cannot expeditiously handle the commercial traffic now offered them.

Accordingly, it is deemed appropriate to take all reasonable steps directed toward the acquisition of an adequate freight car supply and toward maximum utilization of our Nation's existing freight car supply. In the opinion of the State regulatory commissions, the enactment of such legislation as is before this special committee at this time will contribute to that end. The NARUC, therefore, favors the enactment of this legislation.

Respectfully submitted.

AUSTIN L. ROBERTS, Jr.,
General Solicitor, NARUC.

REPORT OF SPECIAL COMMITTEE TO STUDY RAILROAD CAR SHORTAGE

To the National Association of Railroad and Utilities Commissioners:

The 1959 report of this committee sets forth data on the ownership of freight cars, comments on several trends, indicates the several possible points of eliminating, or at least diminishing, car shortages, and discusses the merits of bills then in Congress for an enlarged statement of objectives in the setting of per diem charges. In view of the fact that the ICC is prohibited from considering the earning power of a car in establishing per diem charges, two types of bills had been presented which would have given the ICC a broader base for per diem. For a résumé of these subjects please see the 1959 report.

The rate at which new cars, of all types, are installed has steadily fallen off, whereas the rate of retirements has steadily increased. Witness the following data for class I railroads plus railroad owned and controlled refrigerator car lines:

For 12 months ended	New installed	Retired
Jan. 31, 1958.....	91,337	55,584
Jan. 31, 1959.....	36,361	63,707
Jan. 31, 1960.....	43,016	95,557
Aug. 31, 1960.....	38,146	81,060

The increased rate of retirements is undoubtedly advantageous because it means that substandard and useless cars are being eliminated from the fleet, but the low rate at which new cars are being added to the fleet, causes some concern. These factors, and the current car repair program, influence the following data:

On last day of—	Cars owned	Awaiting repairs	Serviceable cars
January 1958.....	1,826,295	98,359	1,727,936
January 1959.....	1,798,949	156,544	1,642,405
January 1960.....	1,746,388	124,254	1,621,134
August 1960.....	1,739,075	151,033	1,588,042

For quite some time some authorities have predicted severe railroad car shortages; yet general shortages have not materialized. Several factors have been responsible, such as (1) better car utilization, (2) increasing size of cars, (3) increased loadings per car, and (4) a relatively static volume of carloadings. On the latter point we quote the president of the National Association of Shippers Advisory Boards:

"We have gotten by with the equipment that we have today only because we have done a pretty good job of using what we have. At the same time, the railroads' participation in the total intercity traffic has steadily declined in the last decade and it is only because of that decline, percentagewise, in other words, railroad freight has approximately held its own, so far as volume is concerned, and because of that we have been able to get by with slightly fewer cars."¹

As stated above, no general car shortage has resulted. There have been spot shortages, tight supply, temporary shortages, failures in distribution, and shortages of special types of cars. There have been shortages reported of cars available to move the grain harvest; and Government marketing of grain practices sometimes create a peak demand for cars at unusual times. As stated in a congressional committee report, "It is not suggested that the railroads should be expected to meet the maximum peak demand for freight cars at all times, and under all circumstances."

¹W. C. Cole, June 24, 1960, at 107th regular meeting of Pacific Northwest Advisory Board at Seattle, Wash.

Although the railroads have accelerated the building of 50-foot boxcars, wide door cars, DF (damage free) cars, and hopper cars, there is perennially a shortage of such cars in relation to the demand. Shippers have had to be satisfied with cars of less suitable type or grade. Another factor which has affected the whole picture is the phenomenal growth of trailer-on-flat-car or piggyback service, which we will not attempt to discuss here.

We refer again to the fact that the 1959 report of this committee covers other matters not dealt with in the report.

While the predicted serious freight car shortage did not materialize for 1960, yet this must be considered as a temporary respite, and the perennial recurrence of serious freight car shortages warrants passage of the proposed legislation now pending in Congress for the relief of such shortages. The decline in number of new installed cars, the increase in number of cars awaiting repairs, and the marked decline in total serviceable cars as of August 1960 are indications that incentives for the construction and maintenance of additional cars are needed.

In its 1959 report this special committee included recommendations favoring enactment of S. 1789, 86th Congress. This committee again recommends to the NARUC that it actively support enactment of this bill into law. This bill, and an identical bill, H.R. 7937 in the House of Representatives, have as their purpose to give the ICC in its determination of the per diem charges to be paid for the use of railroad freight cars, the additional authority to prescribe a charge which would act as an incentive for the construction and maintenance of an adequate car supply to meet the needs of commerce and the national defense; contribute to sound car service practices; and provide just and reasonable compensation to freight car owners.

The passage of the bill would provide an adequate national fleet of freight cars. It would permit more expeditious movement of existing equipment and would provide just compensation to freight car owners by recognizing the value of the use of such equipment and would correct inequities which are prejudicial to the interest of car owners. For these reasons we urge the National Association of Railroad and Utilities Commissioners to support these bills.

It is hoped that the work of this special committee can eventually be merged with that of the constitutional committee on service and facilities of transportation agencies, in the interest of eliminating duplicative committees. However, until this problem of recurring freight car shortages is satisfactorily solved, it probably should continue to receive the attention of this special committee which can concentrate on this particular subject. The committee should actively cooperate with shippers' advisory boards, legislators, the ICC, and rail representatives for an early solution. We recommend that the special committee be continued for another year.

Respectfully submitted.

FRANCIS PEARSON,
Chairman, Washington.
S. L. "ROY" DOHERTY,
South Dakota.

TROY L. MURRAY,
Massachusetts.

RICHARD G. LONG,
North Carolina.

PAUL A. RASMUSSEN,
Minnesota.

ALFRED H. REICHMAN,
Illinois.

STATEMENT OF SENATOR KARL E. MUNDT ON S. 886 AND S. 1840

Mr. Chairman, for many years my part of the country has been plagued by car shortages that have given me deep concern. During the harvest season many of our elevators are blocked and grain is lying on the ground because no freight cars are available. Yet the railroads in my part of the country own enough cars to handle these crops were they not being used by other railroads that do not own a sufficient number of cars to handle their own traffic.

Mr. Chairman, I know this situation has given you great concern and I know of your efforts to institute and pass legislation to correct it. In my opinion, the basic fault lies with an economic truism—so long as it is cheaper to rent a car than to buy or build one, this situation will continue to exist. I am advised that at present a general purpose freight car costs about \$10,000 and the owner, when that car is in the possession of another railroad, receives only \$2.88 a day rental. This appears to me to be a pretty good proposition for the railroad that does not want to share the national responsibility of supplying its fair share of cars. If I could rent a fine automobile on any such terms I most certainly would not invest my money to own one.

Now this all gives me great concern and is harmful to the people of my State and to my part of the great agricultural section of the country. But of far greater concern to me is the dwindling freight car supply and large number of cars out of service because of failure to properly maintain them. It frightens me when I think of what could happen in the event we became engaged in a major or even a minor military conflict. During World War II the American railroads did a superb job but today with the car supply at an alltime low and about 10 percent of the present fleet of cars in need of repair, what would happen if the railroads were suddenly called upon to do a similar job?

I believe S. 886 or S. 1840 will help materially in adding to our freight car supply and I urge this committee to report and the Congress to enact this legislation.

(The comments of the Government agencies follow:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 21, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate.

DEAR SENATOR MAGNUSON: This will reply to your letter of February 13, 1961, inviting comments on S. 886, a bill to amend section 1(14)(a) of the Interstate Commerce Act to insure the adequacy of the national freight car supply, and for other purposes.

The bill would require the Interstate Commerce Commission, in fixing a rate of compensation paid by one railroad to another for the use of the latter's freight cars, to consider the level of the national freight car ownership and other factors affecting the adequacy of the freight car supply. The rate could be based on (1) the elements of expense involved in owning and maintaining freight cars including a fair return on value, or (2) the elements reflecting the value of the use of the freight cars or (3) such other basis or combination of bases as the Commission deemed advisable in order to effectuate the purposes of the bill.

The Department recommends passage of this bill.

The supply of serviceable freight cars is declining by substantial numbers annually. In view of the position taken by most railroads that they do not care to speculate on there being sufficient future traffic to justify expensive purchases of high-priced cars, it appears that the introduction into the car rental situation of additional elements, including the added advantages of ownership, which may be considered, would be desirable in order to provide sufficient incentive for the purchase by the railroads of enough cars to meet the needs of commerce and the National Defense.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ORVILLE O. FREEMAN, *Secretary.*

DEPARTMENT OF THE ARMY,
Washington, D.C., July 21, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 886 and S. 1840, 87th Congress, identical bills to amend section 1(14)(a) of the Inter-

state Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The purpose of S. 886 and S. 1840, 87th Congress, which are identical to companion bill, H.R. 146, 87th Congress, and to S. 1789, 86th Congress, is to insure the adequacy of the national railroad freight car supply through adjustment by the Interstate Commerce Commission of the compensation to be paid for the use of freight cars. The bills prescribe the criteria to be employed by the Commission in considering methods by which compensation may be adjusted so that it will be just and reasonable, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

The Department of Defense is vitally interested in there being an adequate railroad freight car supply in the United States. It appears that enactment of either S. 886 or S. 1840 may contribute in some measure toward improving the freight car supply situation in the United States in the future. Although it is believed that under the Interstate Commerce Act as presently written the Commission could utilize the criteria set forth in these bills, it would be advantageous if the Interstate Commerce Act were amended to be more specific and mandatory on this point. Accordingly, the Department of the Army, on behalf of the Department of Defense, recommends enactment of either S. 886 or S. 1840.

The fiscal effects of these bills cannot be estimated.

This report has been coordinated among the departments in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

ELVIS J. STAHR, JR.,
Secretary of the Army.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 24, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: We refer again to your letter of February 13, 1961, with enclosures, in which you asked for our comments on S. 886.

S. 886 would amend section 1(14) (a) of the Interstate Commerce Act, 49 U.S.C. 1(14) (a), to prescribe certain factors for the consideration of the Interstate Commerce Commission in fixing the compensation to be paid by rail carriers for the use of freight cars not their own. The aim of this proposal is to give the Commission a greater degree of flexibility and a broader base for determination in fixing car rentals and thus contribute to the maintenance of an adequate car supply.

Legislation of this type would not affect the functions and operations of our office. While we have no special knowledge of the need for the enactment of S. 886, it would seem to be in the public interest and we have no reason to object to its receiving favorable consideration from your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 24, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of February 13, 1961, requests comments on S. 886, a bill to amend section 1(14) (a) of the Interstate Commerce Act to

insure the adequacy of the national railroad freight car supply, and for other purposes.

The stated purpose of this bill is to insure the continued maintenance of an adequate freight car supply. This is proposed to be accomplished by enlarging the authority of the Interstate Commerce Commission to permit consideration of additional factors in fixing charges made between railroads for the use of cars. This agency subscribes generally to the need for improved freight car supply and where possible undertakes measures designed to assist the situation when car shortages exist. GSA is unable to determine, however, whether indirect measures proposed in this bill would achieve the desired objective.

Under its statute (63 Stat. 383; 40 U.S.C. 481), GSA is interested in transportation and traffic management as a user of transportation services. In this capacity, GSA is not directly affected by this legislation. However, GSA feels that appropriate measures to increase car supply are in the interest of shippers, including the executive agencies of the Government, and accordingly favors the objectives of this bill.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

BERNARD L. BOUTIN,
Acting Administrator.

MAY 31, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: Your letter of February 13, 1961, addressed to the Chairman of the Commission and requesting comments on a bill, S. 886, introduced by you (for yourself and 31 other Senators), to amend section 1 (14) (a) of the Interstate Commerce Act to insure the adequacy of the national railroad freight car supply, and for other purposes, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

S. 886 would amend section 1(14) (a) of the Interstate Commerce Act so as to authorize the Interstate Commerce Commission in establishing a per diem charge for the use of freight cars to determine whether such charge should be computed upon the basis of the elements of ownership expense involved, including a fair return on value, or on elements reflecting the value of their use, or upon such other basis or combination of bases as, in the Commission's judgment, will provide reasonable compensation to the owner, contribute to sound car service practices, and encourage the acquisition of an adequate national supply of freight cars. The bill is consistent with and would implement legislative recommendation No. 2 appearing on page 183 of the Commission's 74th annual report as follows:

"We recommend that section 1(14) be amended to authorized the Commission to determine whether per diem charges for the use of railroad freight cars shall be computed on the basis of cost of ownership and maintenance, value of use, or upon such other basis or combination of bases as will, in its judgment, provide reasonable compensation to the owner, contribute to sound car service practices, and encourage the acquisition of an adequate national fleet of freight cars."

In essence, the proposal would authorize the Commission to fix per diem charges which would motivate every railroad to maintain its ownership of freight cars at a level which will meet the needs of the shipping public during normal times and provide a reasonable supply during periods of emergency.

The diminishing supply of railroad freight cars has been a matter of considerable concern to the Commission for many years. Despite the generally expanding economy of the country, the ownership of freight cars is now less than it was during World War II. As a result critical shortages of varying duration and severity have occurred in almost every year during periods of peak loadings. Studies made in 1950 indicated that a total of 1,935,500 freight cars would be required by 1956 to meet the anticipated needs of shippers. As of January 1, 1956, however, freight car ownership and control of class I railroads (including railroad owned or controlled refrigerator cars) totaled only 1,774,616 cars. As of May 1, 1961, this figure had fallen to 1,710,869 cars.

In addition to inadequate car ownership, one of the greatest contributing factors to recurring freight car shortages has been the failure of some carriers to utilize the existing fleet of equipment more efficiently. To cope with this problem during periods of critical shortages, the Commission has resorted to every means at its command, such as greatly stepped up demurrage charges. While this action has helped to insure prompt loading and unloading by shippers and receivers, it is ineffectual when the equipment is in the hands of the carrier.

Since the earning value of the average freight car greatly exceeds the current per diem charge of \$2.88, some of the carriers have found it cheaper to pay the per diem or car rental charge than to own cars. These carriers, therefore, have no economic incentive to provide their fair share of an adequate car supply.

Some time ago the Commission attempted to take the profit out of "renting" equipment by imposing a penalty per diem charge which it believed would furnish a pecuniary spur to deficit railroads to acquire a sufficient number of cars to at least take care of their own loading obligations. However, in *Palmer v. United States*, 73 F. Supp. 63 (1947), a three-judge district court held that the use of the word "compensation" in section 1(14)(a) of the Interstate Commerce Act, which authorizes the Commission to fix reasonable compensation for the use of cars, precluded it from establishing a per diem charge in excess of any purported reasonable recompense to the owner.

If the advantages of owning equipment could be made more attractive, there should be a greater willingness on the part of every railroad to make its just and equitable contribution to the national freight car fleet. Enactment of S. 886 would, we believe, go a long way toward the accomplishment of this objective by authorizing the Commission to prescribe per diem charges on a basis that would provide an economic incentive to the carriers to acquire and maintain an adequate supply of freight cars. Its enactment would thus overcome the effect of the *Palmer* case and would be of substantial assistance to the Commission in its efforts to alleviate the crippling economic effects of freight car shortages.

We therefore recommend early and favorable consideration of S. 886.

Respectfully submitted.

HOWARD G. FREAS,
KENNETH H. TUGGLE,
EVERETT HUTCHINSON,

Chairman, Committee on Legislation.

(The following were ordered to be made a part of the printed record:)

BOARD OF RAILROAD COMMISSIONERS
OF THE STATE OF MONTANA,
Helena, June 1, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: As chairman of a special committee to study railroad car shortages duly appointed by the National Association of Railroad & Utilities Commissioners, I write to urge favorable action by your committee on S. 886 and S. 1840, which I understand are scheduled for hearing at Washington, D.C., June 13-14, 1961.

Since the national association has repeatedly approved the principles stated in these bills, I anticipate they will receive further support from Mr. Austin L. Roberts, Jr., general solicitor of the national association, but as chairman of the car shortage committee I wish to record this further endorsement and ask that it be made a part of your committee record.

I will not undertake to outline in detail the reasons for our support of this legislation, because they are well stated in the report of your committee dated June 29, 1959 (Rept. 452, 86th Cong., 1st sess.), in connection with S. 1789, a bill which was identical with S. 886 and S. 1840 pending in the present Congress. But I do wish to point out that the deplorable conditions described in that committee report have not improved but, on the contrary, have become worse since the report was submitted to the Congress. During the decade 1925-34, car ownership of class I U.S. railroads was generally in excess of 2 million cars. During the 25 years thereafter (1935-59), total ownership declined so

precipitously that on January 1, 1959, the national car fleet was down to 1,725,723 cars. Subsequent comparable ownership figures are as follows:

Jan. 1, 1959-----	1,725,723	Feb. 1, 1961-----	1,659,259
Jan. 1, 1960-----	1,677,965	Mar. 1, 1961-----	1,654,099
Jan. 1, 1961-----	1,661,577	Apr. 1, 1961-----	1,649,727

In fact, if we exclude the years 1939-40 (at the end of the great depression and just prior to World War II), freight car ownership of the American railroads is now lower than it has been in more than 40 years.

It is significant that the figures just quoted include many cars which are out of service awaiting repairs. The serviceable fleet on April 1, 1961, was down to 1,492,115 cars.

There are both sound economic and national security reasons for quick passage of this legislation. To serve the needs of American commerce we must upgrade in both numbers and quality the Nation's supply of railway cars. Since car rental charges are a factor which influences the level of freight car ownership as well as the movement of existing equipment, and since the Interstate Commerce Commission is charged with responsibility for an adequate national car supply, it seems clear that the Commission should be told that, in exercising this responsibility, it may fix car rental charges on any basis that, in its judgment, will provide just and reasonable compensation to freight car owners, contribute to sound car service practices, and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

These bills (S. 886 and S. 1840) would do this, and as chairman of the NARUC car shortage committee I respectfully urge enactment of this much-needed legislation.

Very truly yours,

JACK HOLMES, *Chairman.*

[From the Journal of Commerce and Commercial, New York, N.Y.]

TRAFFIC REPORT—RAIL FREIGHT CAR FLEET TERMED IN NO SHAPE TO FILL NEW DEMANDS

NEW YORK, July 5, 1961.—With traffic picking up on a number of the Nation's railroads, the American Railway Car Institute has warned of the threat of a serious car shortage.

The rolling stock of American railroads is in the poorest shape since the depression and "wholly unready to meet the imminent needs of a resurgent economy," the group declared in a midyear report.

Freight cars are being scrapped faster than they are being built, and about 10 percent of cars retained in U.S. fleets are unfit for use, ARCI continued.

THREAT TO GRAIN CROP

"Unless the railroads, especially those carriers that have been depending on others to do the buying, start replacing wornout equipment, we may see a recurrence of the experience of several years ago when grain was piled on the ground because of the lack of cars, and much of it blew away," stated Walter A. Renz, executive vice president of the institute.

He added: "Only this time the shortage of cars will reach out to many more classes of commodities."

Facilities exist for turning out 10,000 new cars a month, yet order backlog of freight car builders currently stands at only about 4,000, "less than 2 weeks' work at peak production rates," Mr. Renz said.

UPGRADING NEEDED

If railroads are to attract a larger proportion of freight traffic, they must upgrade their equipment, "special equipment must be increased, new types of equipment must be developed, and the old equipment must be retired and replaced.

"In every instance where the railroads have followed this line of reasoning, important gains were registered. The tremendous success of piggyback is familiar enough.

"More recently, there have been such innovations as lower slung cars to overcome tunnel obstructions. Yet another case in point are flatcars equipped with racks that have brought new-automobile traffic back to the rails," Mr. Renz declared.

BURLINGTON LINES,
Chicago, Ill., August 30, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: My attention has been directed to letter of August 7, 1961, addressed to you by Secretary Hodges, concerning S. 886. It arrived while I was on vacation—which accounts for this delayed reaction—but I would like to comment on certain parts of it.

1. *The Palmer case*

Much misunderstanding exists concerning the *Palmer* case (75 F. Supp. 63). It presented an "exceedingly narrow question" involving temporary action "with an element of penalty," and contemplated an increase of almost 100 percent in per diem charges "to promote greater efficiency" in the use of cars. The Court referred to "confusion as to the precise questions presented"; made it clear that "reasonable remuneration for car ownership is not in issue"; and frequently referred to the charges under attack as "prohibitory," "instrument of compulsion," "avowedly in excess of fair recompense," "indefinite expansibility of its amount," etc.

Contrasted with this background, S. 886 would amend the nonemergency provisions of the act, governing continuing basic per diem charges, without penalty, and its primary purpose is "to insure the adequacy of the national railroad freight car supply." No one has even suggested that "prohibitory" increases in per diem charges, approaching 100 percent, would be necessary to provide an incentive for greater car ownership—the basic purpose of the bill.

Properly construed, the *Palmer* case contains no condemnation of the principles which underlie S. 886. True, the bill would authorize the Commission to consider "value of use" as a factor in reasonable car rentals, as well as other factors such as costs and risks of ownership, including, presumably, an "increment to attract capital." But these, and other factors such as "interest" and "profit," are generally considered in rental arrangements of all kinds. They are part of "compensation in a wholly remunerative sense" which the Court could not, and did not, disapprove.

But the *Palmer* case has created doubt and confusion. In some quarters it has been misconstrued to forbid consideration of important rental factors such as "value of use," "risks of ownership," "increment to attract capital," etc. I do not agree, but in view of the public interest in and the Commission's responsibility for an adequate car supply, the statute should be clarified. The Commission should be clearly authorized to fix car rental charges upon such basis, or bases, as in its judgment will provide just compensation, contribute to sound car service practices, and "encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense." This is the essence of S. 886.

2. *Historical per diem charges*

Per diem charges in the past, and currently, have not solved the problem, because they have never provided an incentive for car ownership. If an "increment to attract capital" or other incentive for car ownership—over and above basic ownership costs and interest—were included in the basic per diem charge, self-interest would encourage greater car ownership, and this sound and simple economic approach to the problem has never been tried.

3. *Demurrage, per diem, and economics*

The Secretary's letter suggests that "in the demurrage charge the user of the freight car has an opportunity to escape the penalty, whereas in the per diem charge the user has no opportunity to escape penalty."

S. 886 does not contemplate "penalty" charges. It contemplates "compensation in a wholly remunerative sense," including an "increment to attract capital," adequate recognition of the "risks of ownership," and other factors which will operate, automatically, as an incentive for increased freight car ownership. But in practical effect the car user can "escape" most of the charge (1) by

prompt return of cars to their owners or (2) by acquiring more cars himself and thus obtaining, for himself, the rental which accrues to all car owners.

It must not be forgotten that if each railroad owned its fair proportion of the national fleet, the level of per diem charges would be noncontroversial, because per diem debits and credits would then offset each other. The mere fact that such charges are controversial is cogent evidence that it is "cheaper to rent than to own," and that the rental charge does not fully reflect either the "value of use" to the car user or the burdens of ownership which rest upon the car owner.

The Secretary's letter seems to recognize this important fact, for he says: " * * * terminating roads frequently find it profitable to retain foreign cars and to minimize their own ownership, particularly when the revenue per loaded car-day exceeds the per diem rental and traffic demand is active."

Here, in the Secretary's own words, is a powerful argument in support of S. 886. As he says, under present conditions many roads earnestly seek to "minimize their ownership" of freight cars. Under S. 886 all roads could be encouraged to maximize their ownership—"to meet the needs of commerce and the national defense." This is obviously in the public interest.

Very truly yours,

ELDON MARTIN.

BAD ORDER SITUATION—CLASS I RAILROADS

Class I railroads reported 151,500 revenue freight cars, or 9.3 percent of their ownership, in unserviceable condition on August 1, 1961. This is a reduction of 401 in the number of bad order cars compared with 1 month earlier but an increase of 7,921 above 1 year ago.

New car installations in July 1961 totaled 1,125, which was less than in any month since April 1950. Retirements totaled 10,547, the largest number for any month since December 1959. As a result, class I ownership decreased from 1,637,703 on July 1, 1961, to 1,628,281 on August 1, 1961, a loss of 9,422 cars.

Although 1,863 new or rebuilt cars were ordered during July 1961, this was more than offset by cancellation of orders for 2,400 cars. The net result was minus 537. There were 8,026 new (including 249 rebuilt) cars on order on August 1, 1961, which was less than at any time since May 1939.

The class I serviceable fleet on August 1, 1961, totaled 1,476,781 cars, 9,021 less than 1 month earlier and 52,061 cars less than 1 year ago. The current serviceable fleet is the smallest since November 1939.

The following table compares current serviceable ownership by principal types of cars with 1 month and 1 year earlier; also with January 1, 1961, and with the peak serviceable ownership reported since World War II on January 1, 1954.

Aug. 1, 1961, versus—	Boxcars	Gondolas	Hoppers	Flatcars	All types
July 1, 1961.....	D-3, 147	D-1, 182	D-4, 247	D-223	D-9, 021
Aug. 1, 1960.....	D-26, 631	D-11, 383	D-18, 425	I-956	D-52, 061
Jan. 1, 1961.....	D-18, 544	D-5, 619	D-4, 817	D-81	D-28, 949
Jan. 1, 1954.....	D-80, 240	D-57, 237	D-98, 976	I-5, 033	D-205, 806

On August 1, 1961, class I roads reported 127,999 system cars, or 7.9 percent of their ownership on home rails, in need of heavy repairs. This compares with 7.9 percent 1 month earlier and 7 percent on August 1, 1960. The following table gives a breakdown of these data by principal types of cars.

	Boxcars		Gondolas		Hoppers		Flatcars		All types	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Aug. 1, 1961.....	48, 504	7. 2	30, 009	11. 5	41, 035	8. 7	2, 921	5. 4	127, 999	7. 9
July 1, 1961.....	49, 774	7. 3	29, 875	11. 4	41, 480	8. 7	2, 855	5. 3	129, 544	7. 9
Aug. 1, 1960.....	44, 656	6. 4	26, 898	9. 9	40, 229	8. 2	1, 895	3. 7	117, 893	7. 0

There were 13,072 cars reported given heavy repairs in class I railroad car shops in July 1961 compared with 17,093 in June 1961 and 13,138 in July 1960.

Heavy repairs by types of cars and the ratio of repairs to the number of system cars held for heavy repairs as of the first of the month are shown in the following table:

	Boxcars		Gondolas		Hoppers		Flatcars		All types	
	Heavy repairs	Ratio	Heavy repairs	Ratio	Heavy repairs	Ratio	Heavy repairs	Ratio	Heavy repairs	Ratio
July 1961.....	6,922	13.9	4,163	3.9	2,996	7.2	660	23.1	13,072	10.1
June 1961.....	8,718	17.1	1,597	5.3	4,325	9.3	768	27.1	17,093	12.6
July 1960.....	6,009	13.9	4,558	6.2	3,072	8.0	907	50.0	13,138	11.7



