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86TH CONGRESS, 1st Session | SENATE | REPORT No. 452

FREIGHT CAR SUPPLY

JUNE 29, 1959.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1789]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1789) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. PURPOSE OF THE BILL

The major purpose of the bill is to insure the adequacy of the national railroad freight car supply. This objective is to be attained, not by arbitrary Government action, but by authorizing and directing the Interstate Commerce Commission, after hearing, to prescribe car rental or "per diem" charges, paid by the using railroads to the railroads owning freight cars, upon a basis which will encourage the acquisition and maintenance by the railroads of a car supply adequate 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 bill's major purpose and objective, an adequate national fleet of freight cars would be accomplished by providing incentives for increased car ownership through operation of economic laws and the profit motive. In addition enactment of the bill would contribute to sound car service practices by promoting more expeditious movement of existing equipment. Finally, it 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 interests of car owners.

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II. BACKGROUND OF FREIGHT CAR SHORTAGE

Freight car shortages, of varying duration and severity, have plagued this country and its shippers for more than a generation. See "The Story of the Box Cars" dated April 1, 1948, an interim report (No. 1046) by this committee during the 2d session of the 80th Congress.

The railroads, the Interstate Commerce Commission, and other transportation experts, have wrestled with this perennial problem for many years, but it still persists and, in many respects, has become progressively worse. It is now a problem of major national importance, not only from the viewpoint of the railroads and their employees, but also from the vewpoint of the Nation's shippers and, indeed, from the viewpoint of the national defense. This stark fact is universally recognized, unchallenged, and supported by the testimony offered before this committee.

Total freight car ownership by class I railroads, including railroad owned and controlled refrigerator cars, has decreased substantially over the years. The high point was reached on January 1, 1926, when freight car ownership was 2,427,026. Recent comparable ownership figure show:

Jan. 1, 1958	1, 824, 603	Mar. 1, 1959	1, 796, 340
Jan. 1, 1959	1, 800, 770	May 1, 1959	1, 781, 313

Excluding railroad owned or controlled refrigerator cars, which generally are not subject to daily rental or per diem charges, the May 1, 1959 ownership of 1,781,313 cars is reduced to 1,707,280 cars.

But this is only a part of the story. The percentage of bad-order cars, that is, cars out of service awaiting repairs, shows a substantial increase in recent years as follows:

	Cars out of service awaiting repairs	Percent
Jan. 1, 1956	74, 371	4.2
Aug. 1, 1958	140, 286	8.0
Feb. 1, 1959	153, 431	8.9
Mar. 1, 1959	160, 865	9.2

Bad-order cars in excess of 4 percent of the total ownership is undesirable.

Unfortunately the decline in total freight car ownership, and the alarming increase in the number of bad-order or unserviceable cars, has been accompanied by a substantial decrease in the number of freight cars on order. Beginning with 1956, the figures are as follows:

Jan. 1, 1956	139, 879	Jan. 1, 1958	59, 388
Jan. 1, 1957	107, 157	Jan. 1, 1959	30, 922

The hazards of a shrinking and inadequate national freight car fleet, demonstrated by the foregoing statistics, are compounded and aggravated by the fact that current forecasts of the shippers advisory boards predict a substantial increase in carloadings for the year 1959 over 1958. The estimated increase during the second quarter is 12.4 percent, which represents a need for about 54,000 more cars per week in 1959, than were required during the comparable quarter of 1958.

If these shipper forecasts are fulfilled, it is apparent that another serious freight car shortage must be anticipated during the second half of the current year, 1959.

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, nor is it suggested that the freight car fleet should have been maintained at a level in excess of 2.4 million cars owned in 1926. Although total transportation requirements have increased since then, the railroad proportion of the total traffic has declined to some extent and, in addition, the carrying capacity of freight cars has increased, freight train speeds have increased, and average loads per car have shown substantial improvement.

In view of these conditions the railroads do not need today the same number of freight cars which they owned and operated 25 or 30 years ago. The Chairman of the Interstate Commerce Commission, in testimony before this committee, referred to a study which indicated a need for 1,935,500 freight cars in 1956, and it is obvious that the existing fleet of 1,707,280 cars, as of May 1, 1959, is inadequate to meet the needs of commerce and the national defense.

In view of the perennial recurrence of serious freight car shortages, and the fact that these conditions have become progressively worse in recent years despite the efforts of the Interstate Commerce Commission, the railroads, and others, to cope with the problem, your committee recommends that action be taken promptly to encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense by enactment of S. 1789.

What are the causes of this shortage of freight cars, and does an analysis of the problem suggest a solution?

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.

Everyone who has watched a freight train traversing the countryside knows that, generally, it contains freight cars owned by many different railroads. This is a result of the fact that the Interstate Commerce Act, as well as sound public policy, requires through routes and joint rates for traffic moving over various railroads, and also requires that freight cars loaded on one railroad shall move over all railroads involved in transportation of a shipment from origin to destination, without unloading at the "junctions" where railroads connect with each other. In the early days of railroading this was not the case. A railroad could keep its cars on its own line, for the use of its own patrons. Each railroad provided the cars necessary to take care of its own business, and the profit motive provided a sufficient incentive for an adequate car supply. A sound car ownership formula was analyzed in the principles set forth by the Commission in *Huerfano Coal Co.* v. *C.I.S.E. Railroad Co.*, 28 ICC 502. At page

506, the Interstate Commerce Commission said in effect, that each railroad—

> must take the burden of furnishing cars for all that portion of the through transportation which is performed upon its line; that is to say, it must provide such a supply of cars as would be sufficient to enable it to perform its part therein if there were car-for-car interchange at its junction.

Under existing law, however, a freight car owned by a railroad cannot be retained on that line for the exclusive use of its patrons, but must be permitted to move over the lines of all other railroads involved in the transportation of a particular shipment. Under these conditions, of course, the owner-railroad must be paid for the use of its car by other railroads, from the time the car leaves the line of the owner, until it is returned to his possession and control. Such payments are made in the form of daily rentals which, in the parlance of the railroad industry, are called "per diem" charges. Some cars of special types, such as tank cars or refrigerator cars, are subject to a different basis of payment, but this type of equipment is seldom in short supply, generally is of nonrailroad ownership, and is beyond the scope of this inquiry.

Since *January 1, 1957*, the per diem rate has been, and is, $2.75 per car per day. Opinions differ as to the adequacy of this charge. An important group of railroads contends vigorously that it is too low to cover the "bare-bones cost of ownership," that is, repairs, interest, taxes, etc. Others disagree, and still others are neutral. Be this as it may, your committee is convinced (1) 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; (2) that the current charge is wholly inadequate to cover even the "bare-bones cost" of a *new* freight car, bought or built today at a cost which often exceeds $10,000 per car; and (3) that the current per diem charges are wholly inadequate to provide sufficient incentive for acquisition or construction of additional new freight cars.

These briefly are the basic reasons for the continuing shrinkage in our national fleet of freight cars, and the recurring, severe and costly freight-car shortages. To understand this fact clearly it is necessary to revert to the compulsory interchange of freight cars, which requires a car owner to part with possession of his property, and permit its use by other railroads—without regard to the owner's needs or wishes and without regard to the national interest—at a daily rental of $2.75.

All freight shipments involve a consignor located on the "originating" railroad, and a consignee located on a "terminating" railroad. When the shipment arrives at destination and is unloaded, an empty freight car is thus made available for use. A railroad which terminates more traffic than it originates thus acquires possession of many cars owned by other railroads, and this is a tremendous advantage in times of normal or heavy demand for freight cars.

This advantage is compounded, and the consequent prejudice to the car owner is intensified, when, as now, the daily rental or per diem charge is so low as to place a high premium on car rental and a heavy penalty on car ownership. In other words, so long as it is cheaper to rent a car than it is to own one, car ownership will be an unattractive investment, and the use of cars owned by others will be a profitable venture. Under these conditions, the car renter—without any nego-

tiation with the car owner—acquires possession and control of the owner's property, at an inadequate rental of $2.75 per day, and can use it to produce gross income of perhaps $18 or $20 per day. Such a situation provides no incentive for car ownership. On the contrary, it encourages those railroads which can do so to do business on the car investments of others, and creates a condition which is primarily responsible for the gross inadequacy of the national car fleet.

Several years ago the Interstate Commerce Commission, believing in the soundness of the foregoing principles, and in conformity with its statutory obligations ordered an increase in per diem charges for the purpose of promoting greater efficiency in use of cars, and to the end that the national inventory of freight cars might be increased through the provision of incentives for car ownership. *Increased Per Diem Charges on Freight Cars*, 268 I.C.C. 659.

Upon complaint of certain railroads, generally deficient in car ownership, this order was set aside. *Palmer* v. *United States*, 75 F. Supp. 63 (1947). The precise legal effect of that decision is not clear. Primarily it took the view that the record before the Commission was faulty and incomplete, and that the Commission had not made findings of fact adequate to sustain its order. It further held that the Commission could not prescribe per diem charges for "regulatory" purposes, adopted a narrow and severely limited interpretation of the word "compensation," as used in the statute (which, to your committee, seems inconsistent with the broad grant of power in the statute), and, in any event, has been construed to forbid the establishment of per diem charges upon a basis which would yield more than the barebones cost of ownership. In other words, it has been suggested that under the Palmer case the Commission may not prescribe per diem charges upon a level which will produce a profit to the car owner, provide an incentive for car ownership, recognize the value of use of freight cars, stimulate more expeditious use of existing freight equipment, or otherwise encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense.

Without conceding that the Palmer case, properly construed, places such severe limitations upon the exercise of the Commission's powers, in the public interest, your committee believes that all doubt should be dispelled by a clear and unequivocable pronouncement of the Congress. The Commission should not be hampered by legal technicalities 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.

S. 1789 would make it clear that the Commission, after hearing and investigation, may and should prescribe freight car rental or per diem charges upon such basis which, in its judgment, will accomplish or further these sound objectives.

III. SUPPORT FOR THE LEGISLATION

The Interstate Commerce Commission is the Government agency with the greatest interest in this bill. The Chairman of the Com-

mission, in testimony before the committee, referred to Legislative Recommendation No. 1 contained in the 72d annual report of the Commission, for the fiscal year ended June 30, 1958, which reads as follows:

> We recommend (*a*) that section 1(15) be amended so as to authorize the Commission to direct the assessment of penalty per diem charges as an aid in alleviating shortages of railroad freight cars during periods of emergency or threatened emergency, or (*b*) that section 1(14) be amended so as to authorize the Commission to include as a factor in determining the amount of per diem charge, the earning power or value of the use of the vehicle lost to the owner when used or appropriated by others.

Although the Chairman of the Commission appeared primarily in support of S. 1811 and S. 1812, which were drafted to implement the legislative recommendation quoted above, he said also that S. 1789 would "embody the ultimate objective of the Commission's Recommendation No. 1 of increasing the national ownership of freight cars" and that this objective might be accomplished under the bill. During the course of his testimony, the Chairman said:

> Since the earning value of the average freight car greatly exceeds the current per diem charge of $2.75, some of the carriers have found it cheaper to rent cars than to own them. These carriers, therefore, have no economic incentive to provide their fair share of an adequate car supply. If the advantages of renting equipment could be made less attractive during times of car shortages, there would be a greater willingness on the part of every railroad to make its just and equitable contribution to the national car fleet.

The Commission, although it favors also the more drastic legislation incorporated in S. 1812, favors the sound principles embodied in S. 1789 and supports its enactment as an alternative to S. 1811, and as a constructive step toward an adequate national supply of railroad freight cars.

S. 1812 is much more drastic than S. 1789 recommended by the committee. It would authorize the Commission to punish deficiencies in car ownership, and stimulate more expeditious movement of freight cars, by directing assessment and payment of surcharges, over and above the established per diem charges. These penalties or surcharges could be assessed against one or more railroads, in any section of the country, on any kind of equipment under the terms of S. 1812. If the action contemplated by the bill S. 1789 does not occur, it may become necessary to consider punitive legislation like S. 1812 but, at this stage, your committee prefers to approach the problem by providing *incentives* for proper action, instead of *penalties* against individual railroads.

It should be observed, however, that S. 1789 would tend to accomplish, in part at least, an objective of S. 1812, i.e., more expeditious movement of railroad freight cars—a "sound car service practice." Any charge upon a time basis furnishes an incentive for prompt return of property leased or rented from others. The bill, S. 1789, would authorize the Commission to prescribe per diem charges which will encourage that result and thus overcome the adverse effects of the

Palmer case. This would be accomplished by amendment of section 1(14) of the Interstate Commerce Act, which was the section so narrowly construed in the Palmer case. The congressional intent thus expressed would be applicable also to the Commission's emergency powers contained in section 1(15) of the act.

Enactment of remedial legislation is supported by the Interstate Commerce Commission, by the National Association of Railroad & Utilities Commissioners, by a substantial segmment of the railroad industry, and by several shippers and shipping organizations, particularly among the grain and milling trades, who have suffered severely from recurrent car shortages. Many railroads and shipping interests, however, are neutral. On the other hand, a substantial number of railroads, including the short lines railroads, are opposed. In the latter category are many railroads which have a vested interest in the status quo.

Testimony in opposition was vague and unconvincing as to S. 1789. It was asserted that higher per diem charges, established in an effort to augment the national car supply, would be prejudicial to the terminating railroads. Chief among these complaints is the contention, advanced by the Boston & Maine and the New Haven, and other so-called "terminating" railroads, that even if they should acquire more freight cars, under the incentives contemplated by the bill such cars could not be used to earn per diem charges, and would "rust" on the rails of their owners. In support of this theory, it was argued that, under the "Car Service Rules" of the Association of American Railroads, a home-owned car, on the Boston & Maine, for example, cannot be loaded for off-line movement (where it would earn per diem) so long as a car owned by another railroad is available for loading of a shipment consigned to a point on the line of the car owner. Since the Boston & Maine terminates and unloads more cars than it loads for outbound movement, the *theory* is that cars owned by the Boston & Maine always would remain empty on that railroad, and could never earn per diem charges resulting from the use of such cars by other railroads. But the *fact* is in direct conflict with the *theory*. Reproduced below is a statement, taken from the record of the hearings, which shows the percentage of "home" cars on "home rails" for the Boston & Maine, the New Haven, and all U.S. railroads on stated dates:

Statement showing home cars on home rails

Road	Date	Total box			
		Cars owned	Number home cars on line	Percent on line	Number home cars off line
B. & M.	May 1, 1959	4,270	1,331	31.2	2,939
	Feb. 1, 1959	4,308	1,342	31.2	2,966
	Nov. 1, 1958	4,318	973	22.5	3,345
	Aug. 1, 1958	4,346	1,317	30.3	3,029
	May 1, 1958	4,370	1,931	44.2	2,439
	Jan. 1, 1957	3,989	649	16.3	3,340
	Jan. 1, 1956	3,253	790	24.3	2,463
N.Y.N.H. & H.	May 1, 1959	5,912	2,106	35.6	3,806
	Feb. 1, 1959	5,939	1,984	33.4	3,955
	Nov. 1, 1958	5,942	1,325	22.3	4,617
	Aug. 1. 1958	5,948	1,988	33.4	3,960
	May 1, 1958	5,945	3,003	50.5	2,942
	Jan. 1, 1957	5,943	1,327	22.3	4,616
	Jan. 1, 1956	5,962	1,255	21.0	4,707
All U.S. roads	May 1, 1959	716,769	288,965	40.3	427,804
	Feb. 1, 1959	721,730	321,466	44.5	400,264
	Nov. 1, 1958	725,468	249,420	34.4	476,048
	Aug. 1, 1958	730,385	319,687	43.8	410,698
	May 1, 1958	734,098	373,815	50.9	360,283
	Jan. 1, 1957	725,477	288,329	31.5	497,148
	Jan. 1, 1956	716,845	208,555	29.1	508,290

Source: A.A.R. Reports CS 61-A and CS 15-A; Office of G.S.T., June 4, 1959.

On May 1, 1959, for example, 31.2 percent of all Boston & Maine-owned boxcars were located on that railroad, 35.6 percent of cars owned by the New Haven were at "home," and 40.3 percent of the boxcars owned by all U.S. railroads were located on the lines of the car owners. If we reverse these percentages, to ascertain the extent to which Boston & Maine, and New Haven cars were loaded off line, and thus earning per diem charges, we observe that 68.8 percent of all Boston & Maine boxcars were thus in service on other roads on May 1, 1959, and that 64.4 percent of all New Haven boxcars were thus in use on other railroads, whereas the average for all U.S. roads on that date was only 59.7 percent. It is thus apparent, contrary to the contentions of these two railroads, that those railroads are more successful in loading their cars for off-line movement, and thus earning per diem charges, than are most of the railroads in the country. Your committee is not impressed by arguments to the contrary, which underlie much of the opposition to this legislation.

It was suggested, also, that somewhat higher per diem charges, established to provide an incentive for increased car ownership, would unjustly penalize terminating railroads for delays in unloading, at ports and other destinations, for which the terminating line is not responsible, and which it is unable to avoid. The first answer to this contention is the fact that, generally, when a freight car is unreasonably delayed at destination, awaiting unloading by the consignee, so-called "demurrage" charges are assessed against the consignee or owner of the shipment; that these demurrage charges are substantially higher than the per diem charges concurrently assessed; and that the demurrage charges are retained by the terminating line which bears the per diem charges, with the result that the terminating line suffers no actual loss and, in fact, may, under some conditions, make a small profit.

More important perhaps is the fact that methods are available, within the Interstate Commerce Commission, and within the Car

Service Division of the Association of American Railroads, to overcome, adjust, or correct any true inequity or injustice resulting from the assessment of adequate car rental or per diem charges. The most common of these is the so-called "per diem reclaim" under which the "line haul" carrier bears all or part of the per diem charges which otherwise would be borne by a short-haul terminating railroad. Another method, cited in the record, is the so-called "average per diem plan," which was in effect during the car surplus of 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 interests of more efficient transportation, and in an effort to avoid excessive empty car movements. These and other alternatives provide ample protection against any gross inequity which may result from the establishment and assessment of adequate per diem charges.

IV. CONCLUSION

It is important to understand what S. 1789 contemplates and provides, and what it does *not* contemplate or provide. In practical effect, it simply states a series of objectives which are admittedly in the public interest, including the "acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense;" recognizes the important influence exerted by daily rental or per diem charges on the adequacy of the national car supply; and directs the Interstate Commerce Commission to fix per diem charges upon any basis which, in its judgment, will tend to accomplish these objectives, unfettered by legalistic concepts which have hampered its past efforts. It would not permit establishment of such charges by arbitrary action or permit the Commission to assess surcharges against individual railroads. It would recognize and face the unpleasant fact that under present conditions, and for many years in the past, construction of new freight cars actually has been discouraged by inadequate car rentals, and a premium has been placed upon inadequate car ownership. It would direct the Commission, as an arm of the Congress, to use its best efforts to reverse this trend by the establishment of per diem charges which in its judgment will provide an incentive for increased freight car ownership, and insure the adequacy of a national railroad freight car supply.

The Association of American Railroads, at the hearing on these bills, S. 1789, S. 1811, and S. 1812, took no clear position on the merits—presumably because of differences of view among its members—but asked the Committee to take no action on such bills during the present session of the Congress, pending further study of the problem by a committee of railroad executives, recently appointed for this purpose. This committee approves such action by railroad executives and hopes that the efforts of this railroad committee will be fruitful. In view of the fact, however, that recurrent freight car shortages have been a national problem of major importance for more than a generation, and the fact that recurrent studies in the past have produced no solution, your committee cannot justifiably refrain from action which, in its judgment, would promptly pave the way for an investigation and report by the Interstate Commerce Commission which will "encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense."

Accordingly, your committee submits this favorable report on S. 1789 and recommends its enactment, without amendment.

V. AGENCY COMMENTS

Comments on the bill were requested from the following agencies but as yet have not been received: General Services Administration, Office of Civil and Defense Mobilization, Department of Commerce, and the Interstate Commerce Commission. The Interstate Commerce Commission, however, appeared and testified on the bill.

The Comptroller General, in a letter dated May 7, 1959, made the following comments:

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, May 7, 1959.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of April 27, 1959, enclosing S. 1789, and inviting our comment thereon.

This bill would amend section 1(14)(a) of the Interstate Commerce Act, as amended (49 U.S.C. 1(14)(a)), by prescribing certain standards or guidelines for use by the Interstate Commerce Commission in fixing the compensation to be paid for the use of freight cars by carriers not owning such cars. It provides, among other things, that such compensation shall be fixed on such basis "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."

We have no special knowledge of the need for or the desirability of the enactment of this proposal. However, we do not believe that its enactment would be detrimental to the interests of the United States as a shipper nor adversely affect our duties or operations. Accordingly, if considered otherwise meritorious, we would not object to favorable consideration of S. 1789.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

VI. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italics; existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT

* * * * * * *

SEC. 1(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. *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.*

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