RAILROAD WEEK IN REVIEW
February 26, 2021

"The [fuel surcharge] decision affects shippers who have filed antitrust actions against railroads alleging a conspiracy to set fuel surcharges. It is a single stop along a lengthy litigation trip that involves numerous shippers in cases before two separate judges." — Frank Wilner, Railway Age Newswire, February 23

"KCS' Brian Hancock gave the best presentation I have heard for a layman to understand really what PTC and digitalization is and how it works, and in what timeline to move from PTC and safety to Advanced Train Control (ATC) and added capacity, visibility and information flow." — Tony Hatch on the recent Progressive Railroading "Rail/Tech Summit" webcast, February 23

"This particular polar vortex has penetrated much further south than prior such events, and to such an extent that it has triggered widespread failures in the Texas power grid. Extreme weather events can be exponentially more damaging when they occur in atypical locations. For example, Union Pacific and BNSF are very good at winterizing operations in Minnesota, but it's hard not to be caught flat footed when Minnesota's weather shows up unannounced in Houston." — Rick Paterson, Loop Capital, February 21

"As the supply of wind and solar power becomes unpredictable and intermittent, there is a risk that established utilities are being replaced by more intermittent, less reliable, and more expensive sources of energy, which have the potential to destabilize the grid and may lead to brownouts and blackouts." — Daniel Lacalle, The Energy World is Flat, 2015

The ongoing fuel surcharge litigation may yet be resolved in favor of the shipper. *Railway Age* Executive Editor Marybeth Luczak writes:

> Score One for Shippers. A federal district court on Feb. 19 ruled in the plaintiffs' favor on multi-district litigation brought by more than 200 shippers who allege that BNSF, CSX, Norfolk Southern and Union Pacific have conspired to engage in fuel surcharge price-fixing since 2003.
>
> [The court] denied the railroads' motion… "to exclude [pursuant to 49 U.S.C. § 10706] evidence of any discussion or agreement between or among rail carriers that concerned interline movements (and any rate or other action resulting from such discussion or agreement), and to enforce the statutory bar on inferring a conspiracy from specified evidence."

The court argues that the railroads' CFR 49 argument — rate agreements: exemption from antitrust laws — "would extend its protection to discussions or agreements involving competing traffic of the rail carriers. This interpretation is inconsistent with Congress's stated purpose to protect limited categories of discussions and agreements that concern interline movements."

By way of background, *Railway Age* Capitol Hill Contributing Editor Frank Wilner adds,

> The decision affects shippers who have filed antitrust actions against railroads alleging a conspiracy to set fuel surcharges. It is a single stop along a lengthy litigation trip that involves numerous shippers in cases before two separate judges…. After an appellate court [on Aug. 16, 2019] declined to allow the class-action to be certified, those shippers remained individual plaintiffs. These cases allege that the railroads conspired in violation of the antitrust laws to established fuel surcharges collectively.

And the *Trains* magazine Newswire for October 3, 2019, noted that more than twenty individual companies, ranging from Campbell's Soup to Mercedes-Benz USA, had filed suits against BNSF CSX, NS and the UP. The original suits had originally sought class-action status, only to be denied by a federal judge, saying cases would have to be brought individually or by groups of similar shippers.

So finally, with this most recent blessing of the federal district court, the railroad customers' complaint is one step closer to being resolved through the STB, where it belonged in the first place, IMHO.

Norfolk Southern's Fred Ehlers, VP Info Tech and CIO, did a zoom call with Tony Hatch last week on what Tony tags as a "Thoroughbred Technology Update." Tony writes,

> Using PTC as a digital backbone, Ehlers — who has a deep background in both ops and service design — leads his Atlanta-based team which includes a data science "lab" (my term). There are four corners to NS' data-driven tech strategy.
>
> First, to unlock the data potential power of PTC; second, to advance automation of functions from tasks ranging from dispatching to inspection to AAI applications. The third corner is to empower the field forces with improved tools and mobility that were super-charged by the pandemic (such as the virtual crew room); and fourth, to derive value rapidly from these initiatives in a manner similar to the CN focus.

Tony concludes that NS is in a unique position to take a balanced, integrated approach given its heritage of building its own, from coal hopper cars to locomotives to the management team. For example, Ehlers cites "extensive work with Wabtec (on "train pacing," fuel efficiency, and the movement planner etc)." All of which bodes well for all parties from train crews to customers.

Reuters reports that steel users are scrambling for raw materials from flat rolled sheets to hot- and cold-rolled steel. How do railroad carloads of steel support the claim? AAR Week 7 carloads in metallic ores and metals — primary metal products, ferrous scrap, STCC 10 metallic ores and STCC 29 coke — are down 15 percent against a negative three percent year-to-date. The AAR's Feb 5 *Rail Trends Indicator* says primary iron and steel products were down three percent in January, the 23rd straight month of declines.

US Steel output last December was off ten percent year-over-year but that was the smallest decline since the previous March and certainly an improvement the thirty percent plus shortfalls in April and May. On the other hand, iron ore tonnage for last month was up seven percent, the biggest gain in two years. Raw materials up in a down market for the finished product is encouraging.

According to Reuters, part of the reason for the shortages stems from the fact that "domestic steel mills that idled furnaces last year amid fears of a prolonged pandemic-induced economic downturn have been slow in ramping up production, despite a recovery in demand for cars and trucks, appliances, and other steel products."

Norfolk Southern, for example, is a major player in the steel industry and reports January carloads of scrap, ores and products essentially flat year-to-date but for Week 7 down 14, 7, and 17 percent respectively. But if, as Reuters says, unfilled orders for steel in the last quarter were at the highest level in five years and inventories were near a 3-1/2-year low, the odds would be for a return to more normal car-counts to be just around the corner.

The steel users are going to have to do their part. On the fourth quarter call, NS Chief Commercial Officer Alan Shaw said, "Dramatic declines in manufacturing and vehicle production placed downward pressure on steel prices and production for much of the year." So if demand is down, production will follow suit.

The companies cited in the Reuters report have made their case. Yes, steel prices have been rising because fixed costs of running the mill continue regardless of volumes. But, as David Nahass of Railroad Equipment Finance correctly says, "Prices are expected to modulate midyear as additional capacity comes on line." There's another reason normal car-counts may be near.

BNSF reports within the Berkshire report tomorrow. Full-year revenue units were off nearly eight percent yet Q4 units were actually up two points. The trend is up, too. BNSF units YTD 2021 are even with last year, better than its peers which are all down.