

No. 36085

**FORD MOTOR COMPANY v. ERIE LACKAWANNA RAILWAY  
COMPANY (THOMAS F. PATTON AND RALPH TYLER, JR.,  
TRUSTEES)**

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*Decided March 3, 1977*

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Additional switching charges assessed for respotting of partially loaded or unloaded freight cars at complainant's Mahwah, N. J., plant found applicable and not shown to be unjust and unreasonable or otherwise unlawful. Complaint dismissed.

*Donald J. Clark, David R. Larrouy, and Walter Vashak* for complainant.

*J. T. Clark* for defendant.

REPORT AND ORDER OF THE COMMISSION ON RECONSIDERATION

DIVISION 2, ACTING AS AN APPELLATE DIVISION, COMMISSIONERS  
HARDIN, O'NEAL, AND CLAPP

*O'NEAL, Commissioner:*

The modified procedure was followed. By complaint filed April 10, 1974, Ford Motor Company (Ford), a Delaware corporation, alleges that defendant, Erie Lackawanna Railway Company (Thomas F. Patton and Ralph Tyler, Jr., Trustees), as part of its delivery of carload shipments, performs switching services of those cars between its classification yard adjacent to the plant and the unloading locations within the confines of the plant, and that during the removal of empty cars from the plant and delivery of loaded cars, Erie has respotting partially unloaded cars to different spots on the same track at the request of Ford, and that Erie has unlawfully assessed switching charges in addition to its line-haul rates on the above movements from May 19, 1971 to April 10, 1974 under Item 1220-A of its Tariff 5103, ICC 125 (Erie Series). Complainant further alleges that the assessment of such charges in addition to the line-haul rates violates sections 1(5), 1(6), and 6(7) of the Interstate Commerce Act and seeks a cease and desist order and a waiver of collection of undercharges by defendant on the above-described movements, or such other relief as this Commission shall determine complainant is entitled to, or shall order.

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In the initial decision, served July 30, 1975, the Administrative Law Judge found the shifting of partially loaded or unloaded cars at Ford's platform along the same track, including the mat area, which is made necessary by Erie's normal switching operations, is not a second placement of those cars but is a part of the carrier's line-haul obligation, and that collection of an additional charge would be illegal in violation of section 6(7) of the act under the interpretation given Item 1220-A of Erie Tariff 5103, but if this item were found applicable, such collection would be unjust and unreasonable in violation of sections 1(5) and (6) of the act. By Decision and Order of the Commission, served May 17, 1976, Review Board Number 4, (Board Member Shaw dissenting), adopted the recommended decision. A motion to strike defendant's petition for reconsideration, and, in the alternative, a reply to the petition for reconsideration was filed by Ford on July 6, 1976. Erie replied to the motion to strike on July 12, 1976. An order by Division 2, Acting as an Appellate Division, served October 5, 1976, denied the motion to strike and reopened the proceeding for reconsideration on the present record. Our ultimate findings differ from those of the review board.

The proceeding arose out of an action at law filed against Ford by Erie for collection of the assessed switching charges. By order of the Superior Court of New Jersey Law Division, Hudson County, dated October 21, 1974, in Docket No. L-14000-73, the action was stayed pending a determination by this Commission of the applicable and lawful charges.

The issue is whether respotting of partially loaded or unloaded cars to different bays at the request of the plant personnel is incidental to the removal of empty cars from the plant and the delivery of loaded cars.

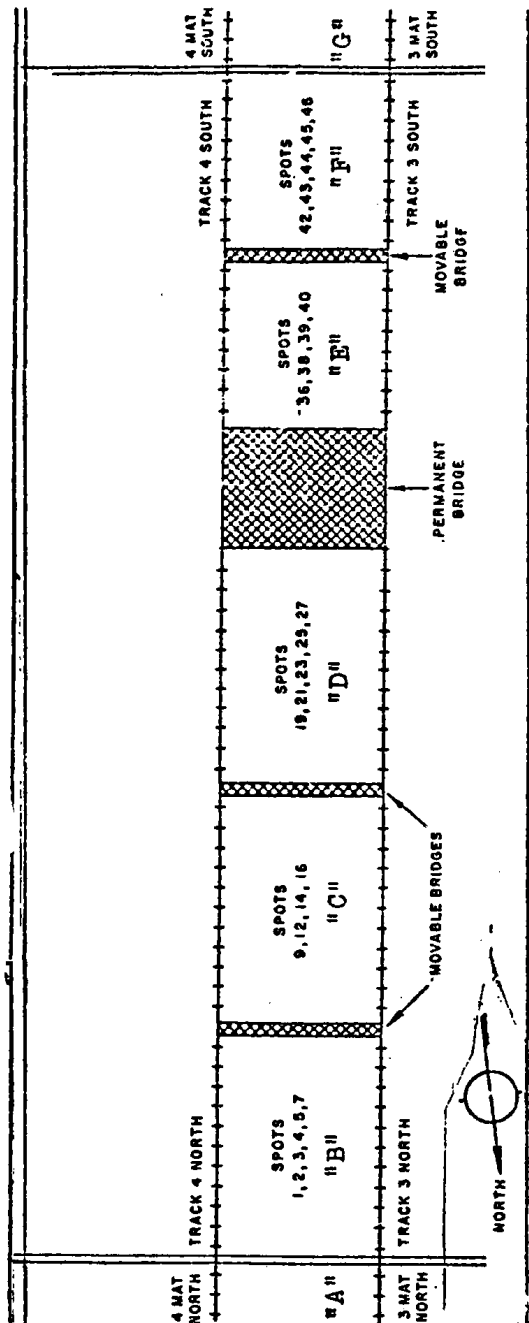
Ford receives carload shipments of auto parts at its Mahwah, N.J., assembly plant from various locations throughout the United States and Canada. Erie is the delivering carrier, and it switches the loaded cars between its classification yard adjacent to the plant and the unloading locations within the confines of Ford's plant. To spot the loaded cars at Ford's dock, Erie must switch out empty cars and partially unloaded cars. Unless it receives instructions to the contrary from Ford, Erie respots the partially unloaded cars at the same places or at least in the same bay.<sup>1</sup> It makes no charge for this respotting. However, frequently, Ford gives specific written

<sup>1</sup>A "bay" is the area between movable bridges within complainant's plant. Each bay contains from four to six spots.

instructions to have the partially unloaded cars respotted in different bays, and Erie has assessed extra charges for such service, which are the subject of this complaint. The unloading area consists of two parallel tracks divided into five separate bays. A diagram of the unloading area is set out below. For convenience, we have lettered the pertinent mat areas and bays.

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DIAGRAM OF RAILROAD UNLOADING AREA AT FORD  
MOTOR COMPANY MAHWAH, N.J. ASSEMBLY PLANT



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As the above diagram shows, the unloading areas for the four tracks begin outside the building where concrete mats are in place. They are designated 3 and 4 north and 3 and 4 south. The tracks extend from the mat areas into the building and terminate on either side of a permanent in-plant bridge. Tracks 3 and 4 north are approximately 1300 feet long and are divided into three equal sections by two vertical movable bridges. Tracks 3 and 4 south are approximately 600 feet long and these two tracks are divided into two equal sections by one vertical, movable bridge. During switching operations, all movable bridges are lowered to track level and do not offer any interference when Erie switching crews place and remove cars.

Erie normally provides two switches per day, one at 5 a.m. and the other at 3 p.m. Under normal conditions, approximately 40 empty cars are removed and replaced with full loads on each switch. The balance of the cars removed, i.e., partially unloaded cars, are inserted into the new line-up of inbound loaded cars and are returned to the unloading area as respots. These respots may or may not be ordered to the same spots at which the cars were initially delivered. During periods of high business activity, the Erie provides additional switches at 10 a.m. and 8 p.m. Approximately 10 empty cars are removed and replaced by loaded cars during these switches.

Switching requests are communicated to the Erie in the form of a written order approximately 12 hours before the requested switch time. A single switch order covers both the north and south sections of a particular track. The car spots are listed numerically.

At the end of a work shift, production control personnel, who are charged with unloading responsibility, return a copy of the switch order to the traffic center. If a car has been unloaded and can be removed from the plant, an (X) is inserted in column "Unload." If unloading has not been completed and the car must be respotted, a check is placed in the "Spot Back" column, and Ford indicates the spot number at which the car is ordered to be placed. If in the spot column the spots are bracketed, it signifies to Erie that the cars may be placed in any order, within the brackets, that is convenient to Erie. Respot requests are forwarded to the carrier on the same switch order used to order new cars from the supporting rail yards.

Respotting of the partially unloaded cars is directed so as to improve unloading productivity and to maintain a fluid unloading operation. For example, many loads contain both passenger car and truck parts. Initial spotting of such cars will be made to points proximate to the passenger car lines, and, on the next switch, the

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cars will be spotted proximate to the truck production line. Similarly, equipped cars awaiting replacement of racks or containers are respotted to areas more accessible to the empty racks. Furthermore, during periods of high activity, loaded cars are initially spotted in the mat areas for removal of critical parts where, if the car is not completely unloaded, it may be respotted to a point more accessible to the production line on the next scheduled switch.

The switching movements in question are the removal from and return to, the same track, although not necessarily to the same spot, of partially unloaded cars. They may include car movements (1) from one spot to another spot in another bay, (2) from the mat area to an inside unloading spot, or (3) from one spot to another spot in the same bay. Erie currently assesses a switch charge for (1) and (2), but not for (3). Thus, Erie makes no charge for respotting of a car within the same bay. However, it does make a charge for respotting a car from a point in one bay to a point in another bay or from the mat area to a bay area.

Erie participates in TLCTR Local Freight Tariff 804, ICC C-853, which provides that no additional charge will be made where the switches are not in excess of the "ordinary operating convenience" of the carrier. The appropriate tariff items are set out in the appendix hereto. Ford submits that under that tariff Erie is required to respot without charge on bay-to-bay and mat-to-bay type movements, since these are incidental to the placement or removal of other cars, and not in excess of defendant's operating convenience. Specifically, complainant avers that the movable cross-over bridges do not alter or interfere with the respotting procedure in any way and that the effort required to return cars to the unloading area is the same for each respot whether it is replaced to its original berth or otherwise so long as respotting is confined to the same track.

There appears to be no dispute that a respotting of a car from bay "B", spot 5, to bay "E", spot 39, for example, is an intraplant switch subject to a switch charge in addition to the line-haul rate. However, according to Ford, if a car is initially spotted in area "B" of the above diagram and then respotted during the process of removal or replacement of cars in area "B", there is no switch charge, yet, if the car is respotted to area "C" or "D" from "A" or "B" complainant is billed a switch charge. Ford contends the switch charge for this respotting is unlawful since this is switching "incidental" to the

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placement or removal of empty cars, or, in other words, the normal realignment of cars.

Defendant's position is that switching or respotting from a point in one bay to a point in another bay is not incidental to the placement and removal of other cars since the movements are ordered by Ford for its convenience and result in added time and expense to the railroad crews. It contends that the switching charges at issue involve switching for the sole benefit of the complainant, and under its published tariffs it is required to assess and collect the intraplant switching charges published in Item 1220-A of Tariff 5103, ICC 125 (Erie Series).<sup>2</sup> Thus, it is Erie's position that TLCTR Local Freight Tariff 804, ICC C-853 is inapplicable, since the respotting is in excess of the "ordinary operating convenience" of the carrier. Defendant explains that if no order to respot a partially unloaded car is given by Ford, the railroad would respot the car at the original spot or at another spot in the same bay to suit its own operating convenience. Defendant stresses that it assesses a switch charge only when Ford specifically orders a car switched from a spot in one bay to a spot in a different bay. Defendant briefly describes the involved switching service and explains how additional time and effort is required of the railroad to comply with complainant's written order. *Switching Service at Western Points*, 268 I.C.C. 740, is cited in support.

Erie assumes, for example, that car "A" is respotted from track 3, spot 46 to track 3, spot 39 with four new cars ordered between spots 42 and 46, namely, cars "B", "C", "D", and "E". If car "A" had been respotted back to track 3, spot 46, no additional switching would be involved since the car would remain coupled to the engine while it was being pulled out of the plant.

Defendant shows the additional work required to be performed by defendant's switch crew to position each car in the group of cars being replaced in order to comply with complainant's switch request. For example, to respot a car from track 3, spot 46 to track 3, spot 39 requires an additional "doubling"<sup>3</sup> of the cars out in the

<sup>2</sup>This tariff item publishes switching rate bases at Mahwah, N. J., for the following switching service:

On cars, empty or loaded, spotted on a delivery track and subsequently ordered to another location within the same plant.

<sup>3</sup>The term "doubling" as used in this proceeding is the picking up of a group of cars, pulling out of a track, and placing those cars onto another adjacent track prior to a subsequent coupling and replacement of the entire string of cars in the Ford plant as ordered.

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yard and a respotting of the entire track; some situations may require as many as three "doublings" to honor complainant's switch request. The additional time required by the crew to perform this alignment is estimated to be about 15 minutes. If the car had not been ordered to a specific spot, it would have remained coupled to the engine, and no additional switching or "doubling" would have been required to replace the car at its original location.

As noted above, the Administrative Law Judge found, among other things, that the respotting of cars involved herein was incidental to other necessary switching performed by the defendant, and a charge for such service, in addition to the line-haul charge, would be a violation of the act.

On exceptions, defendant submits that the considered removal and replacement of cars partially loaded or unloaded was not performed as a *necessary incident* to the placement and removal of cars moving at published carload rates, and thus such movements could not be deemed to be in the "ordinary operating convenience" of the carrier. Specifically, it reiterates that the orders for respotting are specified by complainant; that consequently it has no freedom to respot at locations convenient for its operations; that no deviation from the switch orders for its convenience is allowed; and that such respotting causes it to incur substantial switching time and expense in realigning the cars or the segment of track involved.

In reply, complainant argues that the respotting movements are incidental to defendant's other necessary switching operations, that defendant's allegation of the "extra work" involved in respotting is unsupported by the evidence, that, in any case, the amount of yard work cannot be the basis for the applicability of an intraplant switching charge, and that the respotting orders are transmitted so that defendant can fulfill its line-haul obligation.

#### DISCUSSION AND CONCLUSIONS

The issue for our determination is whether bay-to-bay respotting of partially loaded or unloaded cars during the removal of empty cars from the plant or the delivery of loaded cars is within the purview of Erie's line-haul obligation.

Generally, the line-haul obligation of a carrier is to provide a freight car, a proper place at which to load or unload it, the conveyance of that loaded car, and its terminal delivery. A proper place at which to load or unload entitles a consignor or consignee to

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have his shipment delivered at a reasonably convenient place, whether this be within the plant, or upon a track agreed upon by him and the carrier. It is clear that the service beyond such reasonably convenient point is not a service which the carrier is obligated to perform under the line-haul rates. See *Industrial Railways Case*, 29 I.C.C. 212 (1914); *Propriety of Operating Practices—Terminal Services*, 209 I.C.C. 11, 18, 27, 32 (1935); *Ford Motor Co. Terminal Allowance*, 209 I.C.C. 77, 80 (1935); *Keystone Steel & Wire Co. Terminal Allowance*, 209 I.C.C. 82, 85 (1935); *Terminal Allowances at Ashland, Ky.*, 213 I.C.C. 603, 610 (1936); *Chesapeake & O. Ry. Co. v. Westinghouse*, 270 U.S. 260 (1926).

As a result of Ex Parte No. 104, Part II, *Propriety of Operating Practices—Terminal Services*, *supra*, plant switching is to be included in the railroad's line-haul tariff rates when it is performed:

- (1) at the railroad's operating convenience;
- (2) in a continuous movement;
- (3) without interruption, or any interference caused by or for which the industry is responsible; and
- (4) not to exceed switching on team tracks, sidings, or spurs.

The Commission expanded the above definition in a report on further consideration in *Propriety of Operating Practices—Terminal Services*, 294 I.C.C. 705 (1955), wherein certain switching operations and factors related thereto were defined as part of the railroad's line-haul service, including the "removal and replacement of other cars" where "performed by the carrier as necessary incidents to the placement and removal of cars moving at published carload rates." The pertinent tariff items involved herein are largely a codification of the principles of the above-cited cases.

Moreover, in *Switching Service at Western Points*, 268 I.C.C. 740 (1947), we discussed "incidental switching" at page 742 of that report wherein we noted:

When the train arrives there may be cars on the track or tracks fully loaded, partly loaded, and empty cars on which loading has not begun, or all of the cars may be loaded and ready to move. The train may have empty cars to replenish the track. The usual practice is to pull out the cars ready to move; this may necessitate pulling out all empty and partly loaded cars ahead of the out-bound cars, and replacing them together with the in-bound cars. In this operation it is sometimes necessary to realine (sic) the cars for convenience in loading or unloading, in the same manner as cars are realigned for loading or unloading less-than-carload freight at railroad freight houses or platforms and on team tracks. The realignment (sic) of the cars depends in many instances on the manner in which the train crew performs the switching operation, and to replace the cars in exactly the same location would often necessitate an additional switch movement.

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This [switching] practice has prevailed on respondents' lines without specific tariff authority, and has been considered by them to be a necessary operating practice as distinguished from a switch movement solely for the shippers' convenience, for which a charge is provided for by tariff publication. Hence the practice has been considered a part of their ordinary duty in efficient and economical handling of traffic.

**In *Spencer Kellog & Sons, Inc., Terminal Service*, 262 I.C.C. 205, 212 (1945), we recognized:**

A carrier may not, however, perform any special or preferred service for a shipper or, when placement has once been made, perform any additional service not incident to its other necessary operations without compensation in addition to that included in the line-haul rates.

Those cases, when read in conjunction with one another, show that when the subsequent replacement of a partially loaded car to a particular spot during the removal or replacement of empty cars is immaterial to the consignee and may be performed by the carrier in a manner which is convenient to the carrier or which facilitates the carrier's other switching operation, it is permissible for the carrier to make such replacement without an additional charge. But where respotting is to a particular spot chosen by the receiver, it is an additional service performed for the receiver and can be done by the carrier only for additional compensation where, as here, the requested respottings involve significant additional movements. In this case, Erie does not charge for respotting within a single bay pursuant to shipper's request, but only imposes a charge when the respotting requested involves a movement to a different bay, which appears to be a significant additional movement.

Undoubtedly, the involved switching in the immediate proceeding is performed during the routine removal and replacement of other cars on the track, but Erie has introduced substantial evidence to indicate that the respotting of partially loaded cars from one bay to another bay at the specific request of the complainant consumes time and creates expenses in addition to those it would otherwise incur in respotting the car to its original bay or a spot convenient for the carrier. It has shown that the involved switching cannot be performed by it at its normal operating convenience, that it does not promote operating efficiencies for the carrier, and that the additional time and expense incurred by honoring complainant's request cannot otherwise be avoided in the routine removal or replacement of other cars. Moreover, it has shown that the specific requests by Ford for a particular bay are used by Ford to promote

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handling and unloading efficiencies particularly for cars loaded with mixed parts.

We think these facts support a finding that the involved bay-to-bay and mat-to-bay switching involved herein is a service performed for the convenience of the complainant and not the carrier. As such, it is a service performed for the complainant beyond the line-haul obligation of the carrier, and the carrier is entitled to additional compensation. Similarly, we think that under the circumstances, defendant's use of the movable bridges as lines of delineation for the purposes of applying charges under Item 1220-A of Tariff 5103, ICC 125 (Erie Series), provides a workable solution to the problem herein since the defendant can apparently accommodate cars anywhere within a particular bay and respot cars incidental to the removal or replacement of other cars on the track without incurring substantial additional operational difficulties.

Therefore, we find that the involved switch movements are additional services for the sole benefit of the consignee and are beyond the carrier's line-haul obligation, and the carrier was correct in assessing a charge in addition to the line-haul rate.

The Administrative Law Judge relied on *Wickwire Bros., Inc., Terminal Allowance*, 274 I.C.C. 307 (1949), for the proposition that the track, platform, or zone served is what governs with respect to a definition of the word "location" as that word is used in defendant's Item 1220-A of Tariff 5103, ICC 125 (Erie Series). However, that case dealt with the initial spotting of lines of cars, whereas in the instant proceeding, we are concerned with respotting specific cars that were temporarily removed from their initial spots, and it is distinguishable on that basis.

Therefore, we conclude that the Administrative Law Judge erred in treating the entire unloading track as "location" for the purposes of applying charges under Erie's tariff Item 1220-A of Tariff 5103, ICC 125 (Erie Series), and in finding the switching charges, even if applicable, to be unjust and unreasonable since the level of the charge is not in issue.

We find that the defendant's additional switching charges assessed for respotting of partially loaded or unloaded freight cars at complainant's Mahwah, N. J., plant are applicable and not shown to be unjust and unreasonable.

We further find that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

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***It is ordered, That the complaint be, and it is hereby, dismissed.***

**APPENDIX**

***Pertinent tariff items from TLCTR local freight tariff 804, ICC C-853***

**ITEM 200**

**APPLICATION OF RULES GOVERNING RECEIPT AND DELIVERY OF CARS  
OF FREIGHT**

**Rule 1.** Except as otherwise provided in Rule 3 and except as otherwise provided in other tariffs, cars of freight moving at carload rates including switching rates and cars of less carload or any quantity freight subject to rules governing the handling of ferry or trap cars as published in tariffs lawfully on file with the Interstate Commerce Commission and State Commissions, will be delivered on and removed from privately owned side tracks or industrial tracks near and connecting with the carrier's tracks without any additional charge, provided there are no conditions which make it unsafe for the carrier's locomotives to operate over such tracks, or that prevent the carrier from receiving or delivering cars at its ordinary operating convenience. (See Notes 2 and 3 of Item 210) (See Exception 1).

**Rule 2.** Except as otherwise provided in Rule 3, cars covered by Rule 1 will be received and delivered at loading and unloading locations on tracks designated by the industry within the industrial plant site without any additional charge when that service can be ordinarily performed in continuous movement at the carrier's ordinary operating convenience, within the meaning of these terms as defined in Notes 1, 2 and 3 of Item 210, provided the locomotives in general use for switching in the vicinity of the plant site can safely operate over the tracks within the plant site.

**Rule 3.** When receipt or delivery of a car or cars as provided in Rules 1 and 2 cannot be accomplished in continuous movement at the carrier's ordinary operating convenience because of interruption, interference or any other condition caused by the shipper or consignee, the carrier will arrange for receipt or delivery under the following provisions (See Note 3 of Item 210):

**A.** If it appears that the delay will be of a temporary nature the locomotive will be held at the nearest available location and the service completed when conditions permit. For delay to the locomotive when so held, a charge of \$3.29 for each five minutes or fraction thereof in excess of 30 minutes will be assessed, which charge will be in addition to the published rate or rates.

Charges will be assessed in accordance with the next preceding paragraph when delays encountered during a locomotive trick or shift aggregate more than 30 minutes.

**B.** If, after a reasonable period of delay, the obstruction or condition preventing completion of service has not been removed or eliminated the carrier may, at its option, withdraw its locomotive and place the car or cars on a hold or other

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available track or tracks within or without, the industry plant site. Charges for the delay encountered shall be computed in accordance with paragraph A. Subsequent movement by carrier locomotive of the car or cars from the hold or other track or tracks to actual point of delivery will be subject to a charge of \$14.90 per car.

- C. For the purpose of applying the provisions of paragraphs A and B, time shall commence to run from the minute the conductor determines that the shipper or consignee is unable to accept service.

EXCEPTION

1. Will not apply for account of the PONY on switching rates and less carload or any quantity freight handled in trap or ferry car service.

ITEM 210-A

EXPLANATION OF NOTES REFERRED TO IN ITEM 200

1. "Continuous movement" means a movement between the carrier's tracks and the loading or unloading locations, a hold track or tracks, or other place where cars are received or delivered without any delay or any suspension or break in time, or continuity of the movement, due to any circumstances or condition for which the industry is directly responsible.
2. "Ordinary operating convenience" means the time selected by the carrier when it is most advantageous to the carrier, in relation to its coordinated and harmonious switching activities in a particular switching zone, when the terminal services are performed by switching locomotives, or at the time the train arrives at the plant site when the terminal services are performed by road-haul locomotives. Ordinarily it contemplates only one switch a day except when additional switches are made by the carrier in its own or the public interest, as distinguished from the industry's interest, to secure the prompt release of equipment or facilities, or when necessitated by the volume of traffic. Movements to, from or within the plant site at other times at the request of the industry or to meet the requirements of industrial operations are not at the carrier's ordinary operating convenience.
3. The operations named below where performed by the carrier as necessary incidents to the placement and removal of cars moving at published carload rates, shall not be deemed (a) to break the "continuous movement," (b) to be in excess of the "ordinary operating convenience" of the carrier, (c) to be an "interruption, interference or any other condition caused by the shipper or consignee," nor (d) to be a "circumstance or condition for which the industry is directly responsible" as those terms are used in these rules:
  - A. ♦ The temporary holding of outbound cars on tracks of the industry for instructions from the shipper or of inbound cars on tracks of the carrier or industry for instructions from the receiver that unloads the car.
  - B. The removal and replacement of cars empty, partly loaded, partly unloaded, or loaded when incidental to the placement or removal of other cars.
  - C. The service of securing the weight of freight, irrespective of the ownership of the scales used, where the weights obtained are used by the carrier for billing purposes.

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- D. Classifying, sorting and lining up cars on industry or carrier tracks.
- E. Delay and interruption resulting from the operations of a common carrier by rail on industry tracks.
- F. Operations performed in providing a service for which a separate charge is authorized pursuant to a published tariff.

(DA 201C-203)

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