

A Day(s) in the Life of an Intermodal Shipment

By

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During my 30 years of representing transportation companies in the United States, the most significant change I have witnessed in transportation is the growth of intermodal transportation. The reasons for this growth have been the subject of many articles, books, papers, discussions over the water cooler and at cocktail hour, and who knows where else. We all know why this growth has happened. The primary driver has been the migration of the production of goods from the United States to overseas locations. As the need for inland transportation of containerized products increased, surface transportation providers developed infrastructure, systems, organization and operations that were designed to service this growing market. For railroads and motor carriers, it was akin to the “follow the traffic” adage that many surface transportation attorneys steeped in a regulatory background found familiar. After seeing factories close and domestic traffic dwindle, but noticing that people were still purchasing from other sources the products these factories used to make, many surface transportation companies altered their business processes to capitalize on the intermodal market.²

Baby boomers will recognize the title of this paper from The Beatles song, “A Day in the Life.” The titles of papers I write rarely are products of extensive thought or rumination. Rather, the titles just sort of come to me. This was no exception. In this paper, I want to give the maritime lawyer an idea of what happens to a containerized shipment when it leaves the cozy confines of the cargo deck of a massive steamship and makes the journey inland to the receiver. In addition, I want to give you an idea of the legal relationships the shipment encounters along the way. I had to add a plural to “day”, since the journey usually takes more than a day. But then as I was beginning to think about the paper, I thought about the song. Remember...

“Woke up, got out of bed
Dragged a comb across my head
Found my way downstairs and drank a cup

¹ General Solicitor, Norfolk Southern Corporation. The views expressed in this paper are his, and not necessarily those of Norfolk Southern.

² For an interesting overview of containerized shipping, see *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger*, by Marc Levinson.

And looking up, I noticed I was late
Found my coat and grabbed my hat
Made the bus in seconds flat”³

So how many of the products mentioned in the song are made in the United States? Beds? Used to come from Michigan and North Carolina. Some still do. Now? Asia. Most mattresses are still made domestically. Combs? No question that those are made overseas. Coffee mugs? May be produced domestically if you have an individualized, artsy one. Otherwise, no. Coffee or tea? Maybe Hawaii for coffee, but highly likely to be imported. Clocks? Probably Asia. Watches? Europe and Asia. Coats and hats? I have some golf hats that claim to be made in the USA, but not many. Coats? I don’t think so. A bus? Assembly, probably yes; components, of mixed origin.

What’s the point of this little diversion? As you read this paper, look at the things around you, and think about how many of them spent some of their lives as products in an intermodal container.

I am sure most of you know more about what happens when a shipment arrives in port than I do. For this discussion, I’ll skip the steps of how the shipment is unloaded from the ship, and go directly to how the shipment either exits a gate by truck or leaves by train.⁴ In both situations, the transaction that takes place is an *interchange*. The shipment leaves the possession of the steamship line and enters the possession of a motor carrier or a railroad. If the port where the ship arrives has what is known as *on-dock rail*, the shipment is loaded by port labor onto a railcar (in this situation, almost always a *well car*). If the port and the railroad work well together, the port personnel load a particular car with shipments that have a final destination of the same rail terminal, and the railcars are coupled together in block order.⁵ Railroad operating people get pretty cranky when a cut of cars⁶ is received that is supposed to be properly blocked but instead is a hodgepodge of containers and cars with multiple destinations. If this happens too

³ THE BEATLES, *A Day in the Life*, on Sgt. Pepper’s Lonely Hearts Club Band (Capitol Records, 1967)

⁴ This paper will *not* discuss the steps needed to clear customs.

⁵ This is also known as *blocking*, or having the train *properly blocked*. The railroad will tell the port the blocks that it wants and where it wants them, such as, for example, “I want the Columbus block at the head end, Chicago in the middle and Atlanta at the tail end.”

⁶ This is another railroad term. A *cut of cars* is a group of railcars that are received together.

frequently, expect the port to get a call from the local trainmaster or terminal superintendent⁷ expressing displeasure about the situation, often accompanied by colorful language. In any event, after the cars are loaded and made ready for transportation, the railroad picks up the cars with a locomotive and travels, in all likelihood, to the origin terminal yard. I'll discuss what happens after that later in this paper.

If the shipment is to move by truck out of the facility, it might go to a railroad or it might go to the ultimate destination. Steamship lines provide both containers and chassis for the movement of their shipments. Two types of agreements should be in place in order for a shipment to exit the marine terminal by truck. First, the steamship line should have a transportation contract with its customer to move the shipment to destination. I am sure MLA members are familiar with such a document. This contract should cover the transportation service provided, the rates for such service, liability for claims and other matters typical to such relationships. My colleagues Bill Taylor and Eric Zalud will discuss these contracts as part of their respective presentations. The other agreement the steamship line should have in place is an interchange agreement. The interchange agreement, in this situation, would be between the steamship line and a motor carrier. This agreement allocates responsibility for the condition of the container and chassis while the container and chassis are in the possession of the motor carrier, and also covers liability while the motor carrier is on the premises of the facility operator. In addition, the agreement should provide for use charges if the equipment is not returned on a timely basis. About 85-90% of intermodal containers and chassis move under the terms of the Uniform Intermodal Interchange Agreement (the "UIIA"), which is administered by the Intermodal Association of North American ("IANA"). The UIIA itself is found very easily at www.uiia.org.

Several years ago, the UIIA provided that a motor carrier was responsible for virtually every phase of the operation of the equipment while the equipment was in its possession. After extensive negotiations between the motor carriers, railroads and steamship lines, the UIIA was amended, effective in early 2005, to provide that a motor carrier was not responsible for defects

⁷ A terminal superintendent has overall responsibility for the smooth operations of a given terminal. A trainmaster's specific duties can be somewhat difficult to define, but in very general terms, he or she is responsible for assuring that trains get moved within a given territory. A sports analogy might be to a "slash" player in football (such as a defensive back/wide receiver/kick returner) or a 6th man in basketball who is capable of playing the two or three positions. A trainmaster is expected to have a number of skills and be good at all of them.

in the equipment other than those specified in an attachment to the UIIA. In essence, the defects listed in the attachment are of the type that the driver should see in the required “walk-around” inspection.⁸ Defects not listed in the attachment are often referred to as latent defects or hidden defects, and are of the type that a driver would not be able to see during the walk-around inspection. The rationale for the amendment was that the motor carrier should be responsible for defects in equipment it does not own or lease that its driver is able to detect when it picks up the equipment at the terminal.

Federal law and proposed regulations have changed the landscape with respect to equipment condition and interchange even further. As part of SAFETEA-LU⁹, the Federal Motor Carrier Safety Administration (“FMCSA”) was charged with promulgating regulations covering the inspection, repair and maintenance of intermodal equipment. In accordance with the direction given to it by this law, FMCSA published a Notice of Proposed Rulemaking on December 21, 2006.¹⁰ Comments from interested parties have been received, and the industry awaits FMCSA’s determination on the final rule.¹¹ When effective, these new “roadability” regulations will affect the operations of all equipment providers of intermodal equipment. Thus, parties engaged in the interchange of equipment at an intermodal terminal will need to be conversant with these regulations.

If the shipment moved by rail to a destination yard, that shipment would leave the rail facility by truck, and the series of transactions and legal relationships described above would be essentially the same.

So what happens when the shipment moves inland by rail? Discussed before was how the shipment gets to the origin yard. At the origin yard, the various blocks are uncoupled and switched to outbound trains headed to the applicable destination yard or to an intermediate yard.

⁸ The Federal Motor Carrier Safety Regulations make a driver of a commercial motor vehicle responsible for being certain that a vehicle is safe to operate before taking it out on the road. See 49 CFR 392.7 and 396.13(a), among other pertinent safety regulations.

⁹ Section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”), which is now codified at 49 U. S. C. 31151. I sometimes wonder if more time is spent on making up the names of these laws to get catchy acronyms than on the substance of the laws themselves.

¹⁰ Docket No. FMCSA-2005-23315, *Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment*.

¹¹ FMCSA says this should occur in the spring of 2008. *Traffic World*, September 10, 2007.

The containers do not leave the cars until reaching the destination yard unless there has been a significant mistake in handling.¹²

When the shipment arrives at the destination yard, activity picks up from the legal perspective. The train arrives at the terminal and takes the cars to an unloading track. A contractor operating a crane will lift the containers off of the railcar and place the container on the ground or on a chassis. Placement on a chassis is known as a “live lift”. At the same time this activity occurs, someone in the yard office is notifying the railroad’s customer that a shipment is “available” for pickup, or the railroad’s information system may generate this notification automatically. When a customer is notified of shipment availability, the clock for “free time” starts. “Free time” is the time that a customer has to pick up a shipment before incurring storage charges. The amount of free time varies by terminal, and generally depends on the number of containers that move through the facility and the size of the facility. It is very important to keep an intermodal terminal fluid.

If the operations of the railroad and the customer are functioning smoothly, the customer notifies its dray carrier and the shipment is picked up shortly after it’s available. When the shipment leaves the facility¹³ the same gate transactions and legal relationships discussed earlier occur.

One other possibility is worth mentioning. Scattered throughout the intermodal network are private facilities. These are intermodal yards that are not operated by a railroad or steamship line. When an intermodal train is delivered to a private facility, the rail carrier has accomplished delivery of the shipment when the cars are placed on the interchange track. If a customer uses a private facility, it will need to have an agreement of some sort with the private facility operator. This is different than when the destination yard is a rail facility, where the rail carrier’s responsibility ends when the shipment is outgated.

So this is a basic overview of what happens when an intermodal shipment moves inland. In order to provide a steamship line with thorough representation, an attorney should have a good working understanding of how this process works, and the various legal relationships that are involved.

¹² Railroad employees switch cars at rail yards. Generally, contractors lift containers on and off of railcars at railroad intermodal facilities.

¹³ When a shipment leaves the facility by truck, it is outgated. When it enters by truck, it’s ingated. Although railroad operations can be somewhat mysterious, the terms used usually aren’t (e.g., ingate, outgate, loading track, unloading track, interchange track and my personal favorite, the runaround track).