The Chlorine Institute, Inc., v. Soo Line Railroad, 792 F.3d 903 (8th Cir. 2015) (holding that the Surface Transportation Board was best equipped to address the reasonableness of a railroad company's requirement that dangerous materials be transported in normalized steel cars, the Plaintiff did not offer sufficient evidence that it would be harmed by the requirements, and dismissal without prejudice by the District Court was thus proper.)

In 2009, in response to several high-profile train derailments, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") began requiring rail car owners who voluntarily remove rail tank cars from service to "prioritize the retirement or removal of pre-1989 non-normalized steel cars." On April 14, 2014, in conjunction with this requirement and larger railroad safety efforts, the Canadian Pacific Railway ("CP") began requiring certain hazardous materials transported on its railways to be shipped in "normalized steel tank cars."

The Chlorine Institute (the "Institute") then filed suit, seeking a preliminary injunction to prevent CP from implementing its requirement. The District Court, after hearing the Institute's claims, held that the Surface Transportation Board ("STB") should determine the reasonableness of CP's requirement and dismissed the suit without prejudice. On appeal, the Eight Circuit Court of Appeals reviewed each of the Institute's claims de novo.

The Institute first argued that the STB did not have primary jurisdiction to hear this case. They reasoned that CP's attempt to override the already existing requirements of the PHMSA was a question of law that should have been heard by the District Court. The court, however, did not believe CP's efforts would override the PHMSA requirements. Instead, the court considered only whether a carrier may impose its own more stringent requirements and whether the STB has the authority to review those requirements. Here, the court was largely persuaded by case law from other jurisdictions. For instance, it noted a Sixth Circuit decision, *Akron, Canton & Youngstown R.R. Co. v. Interstate Commerce Comm'n*, 611 F.2d 1162, 1169 (6th Cir.1979), which held that a carrier "may seek approval of a stricter practice which is shown to be just and reasonable." The court also noted a D.C. Circuit Court decision, *Consolidated Rail Corp. v. Interstate Commerce Commission*, 646 F.2d 642, 652 (D.C.Cir.1981), which held that tariffs imposed by a railroad were "unreasonably high." According to the court, both jurisdictions concluded that "the Interstate Commerce Commission — the predecessor agency to the STB — has authority to review the imposition of requirements by carriers and railroads beyond those promulgated by the DOT in its regu-

lations." The court thus found that neither CP's requirement, nor the STB's review of it, were barred as a matter of law.

Next, the Institute argued that the District Court, rather than the STB, should address the reasonableness of CP's restriction. However, the court found that the STB was better able to decide the question. The court reasoned that this kind of fact-intensive review would require the highly technical and specialized knowledge that the STB already possesses. Further, unlike the District Court, the STB could "solicit comments from interested parties." Here, the court reasoned that a resolution by the STB "would promote uniformity in the question of 'reasonableness' rather than the potential of separate district courts reaching inconsistent resolutions in each individual case." Accordingly, the court held that the STB had primary jurisdiction to hear this case.

As the Institute's entire case hung solely on the reasonableness of CP's requirement and the authority of the STB to hear the Institute's arguments, the court found that the District Court's dismissal of the Institute's claims, without prejudice, was appropriate. The Institute argued that the District Court should have prohibited CP "from imposing its requirement until after the STB [had] decided the issue." The court, however, did not believe the Institute could have satisfied its burden of demonstrating the need for a preliminary injunction.

First, the court did not believe the Institute could convince the STB that CP's requirement was unreasonable. The court found that "the presumption that the DOT has appropriately balanced the safety and economic policy reasons in promulgating adequate regulations favors [the Institute]." However, the court also reasoned that "the agency may have intended to apply the regulations as the minimum for safety standards." Here, the court noted that the proposed 2009 regulations were, in fact, more stringent than the actual regulations. The proposed regulations would have required older tank cars that transport hazardous materials to be replaced with "non-normalized steel cars." As the facts generally did not favor either side, the court was not convinced the Institute could succeed on the merits.

Further, the court did not believe the Institute would suffer irreparable harm if denied injunctive relief. The court noted evidence from a shipper that only 31% of its leased cars would not meet the requirement. The court also noted the lack of evidence that shippers were using all of their fleet at any given time. The court further noted that the Institute failed to present evidence of its attempt to find alternative ways to meet company needs. Finally, the court reasoned that potential economic harm to the Institute would not alone constitute irreparable harm.

Lastly, the court was not persuaded that CP would not be harmed if an injunction were granted to the Institute. The court referenced the re-

cent train derailments and reasoned that both the public and CP would be harmed if the court were to require CP to transport hazardous materials. As the court noted, both CP and the public have a dual interest in preventing such harm.

In conclusion, the court held that CP could impose its own stringent requirement for transporting hazardous materials, the STB could appropriately review the requirement, and the Institute would not be irreparably harmed by the requirement.

Matt Larsen

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