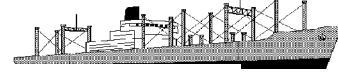




# Rollin' On



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## TRANSPORT TUNES (Blues) "Trains, and boats and planes"

**A**lthough the holiday season is still not upon us, many folks in the transportation business are already nervous about what is to come in the next few months. With equipment shortages, transport delays and now a trade war to boot, there is a growing likelihood that Santa will not fill all of his orders in a timely fashion. Santa's expected problems will impact parents who will need to scramble and help him fill the orders. Santa will need more than a rednosed reindeer this year; he will need something more like a train (a moving train that is, not to be confused with the Union Pacific).

The status of UP is a joke. The railroad seriously miscalculated its personnel needs for the combined operations of the UP and SP. It also committed a *faux pas* in handling whatever personnel were still around to actually run the trains. The condition of SP certainly did not help (in homeowners terms, "deferred maintenance", a euphemism for being sloppy or broke or lazy or careless or just not caring or some concoction thereof).

UP's prior reputation has taken a plunge from superior (everything being relative, after all, we are talking about *railroads*, a neanderthal group on their best days) to something off the chart. Way off the credibility chart, somewhere below professional wrestling (contrary to lawyers who must undoubtedly be somewhere up near Mother Teresa). Inversely proportional is their place on the arro-

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gance scale which was extended upward to allow a place for railroads.

In obligatory corporate tradition, UP sacrificed a mid-level guy (not the top dog, of course) and declared war on itself. After all, the best defense is a good offense. However, in UP's case it was a day late and a train short and its behavior can best be described as offensive. Meanwhile, shippers all over the western states are negatively impacted and can no longer rely on prior service levels, which in turn affects pricing. The end user/customer is increasingly agitated. And to top it off, there are serious safety deficiencies that adversely affect operations when the trains actually do operate.

Enter now the trade war with Japan, and the mix gets gooier. We (the U.S.) are mad at them (Japan) as we claim that Japan favors its shipping lines over our (or foreign) lines. So we fine them and they won't pay the fines and we ban them from entering our ports *but* we detain the ones that are already here. We get our various governmental agencies involved (you know, "I am from the government and I am here to help you"). The Federal Maritime Commission issues the "you can't come here/you can't leave here" order, thus educating all of us ignoramuses as to what it is they do before they are merged into the Surface Transportation Board (Surf 'n Turf). U.S. Customs then gets out its dinghies and

lassos huge container ships. Meanwhile, all of the Christmas goodies aboard those ships, destined for Santa's dock, are frozen in place and the retailers go nuts.

So what happens to the motor carriers, especially the smaller outfits? There have been equipment shortages since many shippers have diverted their rail shipments to trucks, to the ultimate benefit of the truckers. If the ports go dry, will the truckers stay busy? Will the steamship lines divert more traffic to truckers when possible?

Has air been impacted? Maybe we have to ask what that entails, since so many supposed air freight shipments never get off the ground. Now we also have Federal Express buying Caliber System and knowing where the rubber meets the road will be harder to discern. At least UPS, which will probably never recoup its market share, and its pilots have agreed to postpone their battle until after the first of the year, although that leaves us all to worry about how the pilots will be able to survive on their \$200,000 annual salaries. They can take comfort in knowing that the rank and file UPSers will stand behind them as the pilots did for them during their strike.

So what is Santa to do? The trains aren't moving, the ports' traffic may be halted, and the truckers are probably all becoming schizophrenic. Santa will be forced to punt and let the parents deal with their children.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

### The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

### Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation.