

NEW YORK & ATLANTIC RAILWAY COMPANY



FREIGHT TARIFF NYA 7000

NAMING

RULES AND CHARGES GOVERNING

CARGO LOSS AND DAMAGE

RULES AND CHARGES

APPLYING AT STATIONS ON THE

NEW YORK & ATLANTIC RAILWAY COMPANY

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

ISSUED: March 1, 2025

EFFECTIVE: April 1, 2025

ISSUED BY

**New York & Atlantic Railway Co.
68-01 Otto Road
Glendale, NY 11385**

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CANCELLATION NOTICE

FT NYA 7000 replaces provisions formerly shown in FT NYA 8000-B and its supplement. Items not brought forward in FT NYA 8100-C or FT NYA 7000 are hereby canceled.

ITEM 122 CARGO LOSS AND DAMAGE PROVISIONS [A]

1. GENERAL APPLICATIONS

- a. Provisions of this item take precedence over all other liability provisions contained in this publication, except where expressly modified.
- b. The shipper agrees to indemnify and hold harmless the rail carriers from any loss, damage, personal injury or death resulting from the shipper's failure to comply with the provisions contained herein. Acceptance of a shipment by the rail carriers for transportation shall not be considered as a waiver of shipper's liability.
- c. On shipments imported to, or for export from, the United States of America, rail carriers will not be liable for charges such as brokerage fees, fines, penalties, foreign marine or foreign country freight charges, import duties or other such charges on cargo that is lost, damaged or delayed in domestic rail transportation.
- d. Any loss or damage(s) that arise out of shipments that are delayed in transit are limited to the specific amount of cargo loss or damage occurring to product.
- e. Carriers will not be liable for loss, damage, or delay caused by an Act of God, public enemy, public offense, the authority of law, riots, strikes, acts of civil disobedience, inherent quality of characteristic of the commodity, natural shrinkage, an act of default of the shipper, owner or receiver or from shipments stopped and held in transit at the request of the shipper, beneficial owner or receiver.
- f. Carrier's liability will not exceed the actual amount of physical loss or damage sustained to the cargo plus any costs incurred through the efforts to mitigate such loss and/or damage. Carrier will not be responsible for special damages, consequential damages, indirect loss or punitive damages arising from the loss, damage, suspected contamination, or delay to cargo, nor will carriers be liable for any losses attributable to fluctuation in the market value of the cargo. Furthermore, rail carriers will not be liable for any losses, direct or indirect, which result from an interruption of rail service, nor do rail carriers guarantee rail service on any scheduled time frame. Rail carriers will not be responsible for interest or attorney fees. Rail carrier's maximum liability for freight loss or damage will not exceed the liability of the billing party or the party tendering the cargo to the rail carrier.
- g. Unless amended by written agreement prior to shipment, rail carrier's liability for the contents of any rail vehicle will be limited to the destination value of the cargo or \$250,000.00, whichever is the lesser of the two amounts.
- h. Claims or lawsuits for less than \$250.00 shall not be filed and no claim shall be paid if the amount of the loss or damage is found to be under \$250.00 per shipment.
- i. In the event of an act or omission of any party involved in the transportation process; (shipper, carrier, receiver) is not the sole cause but contributes to any loss or damage, each party will be liable for only that portion of the loss or damage caused by its negligence.
- j. Rail carriers are not liable for temperature, corrosion or humidity related losses unless mechanical protective service is requested, paid for and carrier owned or leased equipment is used.

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General Applications (cont.)

- k. Rail carriers are not liable for loss or damage caused by defective equipment when such equipment is not owned or leased by rail carriers.
- l. When the rail carrier(s) provide railcars, consignor/ shipper has the responsibility for inspecting the equipment, and rejecting any which is not in suitable condition to protect and preserve the lading during transportation. The carrier shall not be liable for loss or damage to lading caused by defects in boxcars that could have been discovered by reasonable inspection by shipper prior to loading.
- m. In the absence of any other evidence, a seal breach will not create a presumption of loss or contamination.
- n. Appropriate loading patterns must be present with all Freight claims. NYA reserves the right to deny claim when no loading pattern is provided.

2. LOSS/DAMAGE VERIFICATION & DISPOSITION PROVISIONS [A]

- a. Rail carriers have the right to inspect, weigh or reject shipments at origin, enroute or at destination for non-compliance with the provisions contained in applicable publications.
- b. Shippers are solely responsible for determining the suitability of the Private Equipment to move the respective lading in issue. NYA shall have no responsibility for the failure of Private Equipment to adequately protect the lading where the damage to the lading is not due to any act of NYA but to the nature of the Private Equipment. [A]
- c. Carriers reserve the right to inspect damaged cargo. If rail carrier has notified shipper or consignee that rail carrier is invoking this right, as a condition precedent to recovery of any claims, the consignee must immediately notify the rail carrier upon discovery of any damage and allow carrier or its agent to inspect.
- c. Failure of the rail carrier to inspect damaged cargo, for whatever reasons, will not relieve the burden of the claiming party to establish that cargo was received in a damaged condition, nor will it be considered an admission of liability by the rail carrier.
- d. Shippers and/or consignee must mitigate damage situations by accepting the damaged cargo unless it is without salvage value. Shippers and/or consignees may not abandon damaged or partially damaged shipments to the rail carrier when the damaged shipments retain value.
- e. Product that is abandoned to the rail carrier in an undamaged condition shall be sold for account of whom concerned, and salvage proceeds only, less any salvaging expenses incurred, shall be remitted to the beneficial owner.

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3. CLAIMS

- a. As a condition of precedent for payment of a claim, claims must be filed in writing on approved form, with all required documentation in its entirety, and submitted within six months of waybill date. Claims may only be submitted by the beneficial owner or a party to the transportation terms or agreements.
- b. All written claims must include the following documentation:
 1. NYA Loss and Damage Claim form
 2. Original Bill of Lading, if not previously surrendered to carrier.
 3. Original paid Freight ("Expense") Bill.
 4. Original invoice or certified copy noting value of merchandise on claim
 5. Other supporting documents in proof of loss or damage claimed.
 - Pictures of all seals at time of delivery.
 - Copy of the loading pattern used by Shipper.
 - Record of previous repair from car owner or pre-loading inspection by Shipper.
 - Origin records or certification as to the condition and quantity of the cargo at the time tendered to the rail carrier.
 - Evidence as to the disposition of damaged cargo and/or certification of salvage value.
 6. Claims are for loss and damage only, does not include freight, labor, or other charges.
- c. Rail Carrier reserves the right to summarily deny any and all claims submitted that do not contain all the aforementioned documentation.
- d. All loss and damage cargo claims filed against the carrier(s) must be filed by email within six months of the waybill date to:

New York & Atlantic Railway Co.
68-01 Otto Road
Glendale, NY 11385
Email: NYALossandDamage@anacostia.com

NOTES AND DEFINITIONS [A]

The term “Uniform Freight Classification” when used herein means Freight Tariff Uniform Freight Classification 6000-Series, as published by the American Association of Railroads (AAR).

CONSIGNEE

The party to whom a shipment is consigned or the party entitled to receive the shipment.

CONSIGNOR

The party in whose name a car(s) is ordered; or the party who furnishes forwarding directions.

DIVERSION

An order provided by the consignor instructing that a car be delivered to a location other than the one indicated on the original forwarding instructions.

FORWARDING INSTRUCTIONS

A bill of lading/eBOL or other suitable order containing all the necessary information to transport the shipment to final destination.

LOADED CAR

A car that is completely or partially loaded.

LOADING

The complete or partial loading of a car(s) in conformity with loading and clearance rules and, the furnishing of forwarding instructions.

LOADING PATTERN

Guideline for loading specific types of freight into rail cars, including loading diagrams and manuals.

RESPONSIBILITY

Demurrage and storage fees will be assessed to, and payment will be the responsibility of the party who detained rail cars for an extended period of time or for whom cars or stored. [C]

TENDER

The notification, actual or constructive placement, of an empty or loaded car(s).

EXPLANATION OF REFERENCE MARK [A]

ITEM 9999 EXPLANATION OF REFERENCE MARKS [C]

[A] Denotes Addition

[C] Denotes Change

(Underscored portions denotes addition/change.)