



LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

RECORDATION NO. 12938

LAW DEPARTMENT

FEB 18 1981 - 10 40 AM

February 17, 1981

INTERSTATE COMMERCE COMMISSION

DAVID M. YEARWOOD
GENERAL ATTORNEY

1-049A014

No. [blacked out]
Date FEB 18 1981
Fee \$50.00
ICC Washington, D. C.

Ms. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Madam Secretary:

There are transmitted to you herewith for filing and recordation, pursuant to 49 U.S.C., Section 11303, five duly executed counterparts of an Agreement dated as of February 11, 1981, between Fruit Growers Express Company, whose address is 1625 K Street, N. W., Washington, D. C. 20006, and Louisville and Nashville Railroad Company, whose address is 908 West Broadway, P. O. Box 32290, Louisville, Kentucky 40232.

The equipment covered by this Agreement is:

50 transfer cabooses, bearing the Louisville and Nashville Railroad Company's road numbers 6600 through 6649, inclusive.

By this Agreement, Fruit Growers Express Company agreed to permit the Louisville and Nashville Railroad Company to use such equipment pending completion of financial arrangements covering such equipment. This Agreement expires on March 15, 1981.

There has been no prior recordation of any document relating to this transaction or equipment.

Attached hereto is a draft in the amount of \$50 payable to the Interstate Commerce Commission to cover the recordation fee for said Agreement.

Document - Item 12938

RECEIVED
FEB 18 10 35 AM '81
I.C.C.
OPERATION BR.

This letter of transmittal is signed by an officer of Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please return the recorded counterparts of said Agreement to:

Mr. David M. Yearwood
General Attorney
Louisville and Nashville Railroad Company
908 West Broadway
P. O. Box 32290
Louisville, Kentucky 40232

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood
David M. Yearwood
General Attorney

Attachments

Interstate Commerce Commission
Washington, D.C. 20423

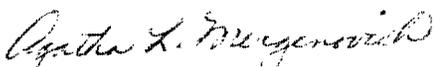
OFFICE OF THE SECRETARY

J. David M. Yearwood
Scarbor
Louisville & Nashville RR Co.
908 West Broadway
P. O. Box 32290
Louisville, Kentucky 40232

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/18/81 at 10:40AM, and assigned re-
recording number(s). 12936

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

REGISTRATION NO. 12936¹⁴²⁵

FEB 18 1981 - 10 40 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of February 11, 1981

between

FRUIT GROWERS EXPRESS COMPANY

and

LOUISVILLE & NASHVILLE RAILROAD COMPANY

Covering

50 Transfer Cabooses

THIS AGREEMENT, dated as of February 11, 1981, by and between FRUIT GROWERS EXPRESS COMPANY, a Delaware corporation ("FGE"), and LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Kentucky Corporation ("L&N"):

W I T N E S S E T H:

FGE and L&N entered into a Purchase Agreement, dated on or about September 5, 1980, as amended and modified by various correspondence and by such agreements as have been made or may be made between the parties (which Purchase Agreement, as amended and modified, whether now or in the future, is made a part hereof by reference), whereunder FGE agreed to construct as its Alexandria, Virginia, plant and deliver to L&N at Alexandria, Virginia, or at such other point or points as directed by L&N, and L&N agreed to accept and pay for:

- 50 Transfer Cabooses, bearing L&N road numbers 6600 through 6649, inclusive.

Delivery of the Cabooses is scheduled to begin February 17, 1981. However, inasmuch as L&N has not as yet consummated financing arrangements (pursuant to Equipment Trust Agreement, Conditional Sale Agreement or otherwise), it is not in position to accept delivery of and pay for the Cabooses under the terms of the said Purchase Agreement at this time. L&N represents that such financing arrangements will be consummated, however, on or before March 15, 1981. L&N (in order that it may use the Cabooses pending completion of the above financing arrangements) has arranged

with FGE to give it temporary custody and possession of the Cabooses on their completion, solely as a bailee of the Cabooses, and FGE is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, FGE hereby delivers to L&N, and L&N hereby accepts from FGE, the Cabooses as of the date each of them is delivered to L&N at Alexandria, Virginia, or such other place as may be specified by L&N, for the period ending on the earlier of March 15, 1981, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cabooses shall remain in FGE and L&N's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. L&N, without expense to FGE, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC Sec. 11303. In addition, L&N shall do such other acts as may be required by law, or reasonably requested by FGE, for the protection of the FGE's title to and interest in the Cabooses.

L&N agrees that it will permit no liens of any kind to attach to the Cabooses, and that it will

- (a) indemnify and save harmless FGE from any and all claims, expenses, or liabilities of whatsoever kind, and

- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cabooses or FGE because of its ownership or because of the use, operation, management, or handling of the Cabooses by L&N during the term of this Agreement.

L&N's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

L&N will, at its own expense, keep and maintain the Cabooses in good order and running condition and will, at its option, repair or replace or promptly pay to the FGE the purchase price in cash of those Cabooses which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Caboose to L&N under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Caboose, in contemplation of the financings heretofore referred to, the following legend in letters not less than one inch in height, for each Caboose as follows: "Ownership subject to a Security Agreement filed with the Interstate Commerce Commission". L&N hereby agrees to indemnify the FGE against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cabooses.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Caboose, L&N shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of FGE, including the right to receive the purchase price of the Cabooses as provided in the Purchase Agreement, may be assigned by FGE and

reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the FGE's warranties, indemnities, or any other obligations contained in this Agreement or in the Purchase Agreement relating to the Cabooses. In the event FGE assigns its rights to receive the payments herein and/or under the Purchase Agreement, and L&N receives written notice thereof from FGE, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by L&N under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to L&N.

In the event of any assignment by the FGE of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counter-claim or recoupment whatsoever arising out of any breach of any obligation of FGE in respect to the Cabooses, nor subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to L&N by the FGE. Any and all such obligations, howsoever arising, shall be and remain enforceable by L&N, its successors and assigns, only against FGE and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

L&N agrees with FGE that the execution by the FGE of this Agreement or the delivery by FGE to L&N of the Cabooses, as contemplated by this Agreement, shall not relieve L&N of its obligations to accept, take, and pay for the Cabooses in accordance with the terms of the Purchase Agreement, or impair any of FGE's rights under the Purchase Agreement.

FRUIT GROWERS EXPRESS COMPANY

BY Walter A. Dale

(Corporate Seal)

Attest:

T. W. Polster
Secretary

LOUISVILLE & NASHVILLE RAILROAD
COMPANY

BY W. J. Johnson

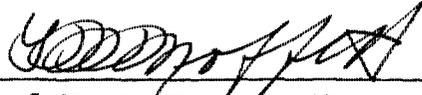
(Corporate Seal)

Attest:

David M. Yeawood
ATTESTING OFFICER

DISTRICT OF COLUMBIA)
) SS:
CITY OF WASHINGTON)

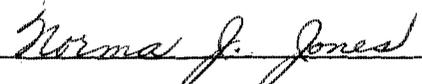
On this 11th day of February, 1981, before me personally appeared WADAH to me that he is a Vice-President of FRUIT GROWERS EXPRESS COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


L. W. MOFFETT, Notary Public
City of Washington, District of Columbia
My Commission Expires October 14, 1982

(Notarial Seal)

STATE OF KENTUCKY)
) SS:
COUNTY OF Jefferson)

On this 11th day of February, 1981, before me personally appeared W. Johnson to me personally known, who, being by me duly sworn, says that he is Vice-President of LOUISVILLE & NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



(Notarial Seal) My Commission expires March 4, 1981.