

RECORDATION NO. 9406-M Filed 1425

ITEL

FEB 8 1988 -3 35 PM

INTERSTATE COMMERCE COMMISSION
IteI Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

January 29, 1988

No. **8-039A047**
Date FEB... 8, 1988
Fee \$ 20.00

Hon. Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

ICC Washington, D. C.

Re: Amendment No. 7 dated December 31, 1987, to December 23, 1987, as amended, among IteI Corporation, SSI Rail Corp. and Marinette, Tomahawk and Western Railroad Company

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$20 recordation fee.

Please record this Amendment under the Lease Agreement dated December 23, 1977, as amended, among IteI Corporation, SSI Rail Corp. and Marinette, Tomahawk and Western Railroad Company, which was filed with the ICC on May 26, 1978, under Recordation No. 9406. Please cross-index this Amendment to the Equipment Trust Agreement dated January 1, 1982, between IteI Corporation and First Security Bank of Utah, N.A., which was filed with the ICC on September 23, 1983, under Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Marinette, Tomahawk and Western Railroad Company (Lessee)
P.O. Box 310
Tomahawk, Wisconsin 54487

This Amendment extends the term of the Lease Agreement for boxcars bearing reporting marks MTW 1100-1149 and MTW 8000-8050 to December 31, 1992.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

PS/ke
Enclosures

MOTOR OPERATING UNIT
FEB 8 3 31 PM '88
THE SECRETARY
ICC OFFICE OF

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Patricia Schumacker
IteI Rail Corp.
55 Francisco Street
San Francisco, CA 94111

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/8/88 at 3:35PM, and assigned recordation number(s). 9406-M & 13693-H

Sincerely yours,

Neville R. McEwen

Secretary

Enclosure(s)

RECORDATION NO. 9406-M FEB 8 1988

FEB 8 1988 -3 45 PM

INTERSTATE COMMERCE COMMISSION

11/11/87

AMENDMENT NO. 7

AMENDMENT NO. 7 (the "Amendment") to that certain Lease Agreement dated as of December 23, 1977, as amended, (the "Lease Agreement") among ITEL Corporation, SSI Rail Corp. and MARINETTE, TOMAHAWK AND WESTERN RAILROAD COMPANY ("Lessee") is made as of this 31st day of Dec., 1987, by and between ITEL RAIL CORPORATION, as successor in interest to both SSI Rail Corp. and ITEL Corporation ("Lessor") and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Lease Agreement pursuant to which three hundred ninety-six (396) boxcars bearing reporting marks from within the series MTW 1100-1149, MTW 4300-4599 and MTW 8000-8050 (the "Boxcars") have been leased by Lessor to Lessee.
- B. The parties desire to extend the term of the Lease Agreement with respect to the Boxcars bearing the reporting marks MTW 1100-1149 and MTW 8000-8050 as set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual agreements contained herein, the parties hereto agree to amend the Lease Agreement as follows:

1. All terms defined in the Lease Agreement shall have the meanings defined therein when used in this Amendment.
2. With respect to the Boxcars bearing the reporting marks MTW 1100-1149 and MTW 8000-8050 only (the "Cars"), the words "on December 31, 1987" in Subsection 2.A. of the Lease Agreement, as amended by Amendment No. 6 dated September 28, 1987 to the Lease Agreement, are replaced by the words "on December 31, 1992."
3. A new Subsection 3.E. is added to the Lease Agreement as follows:
 - "E. During the term of this Lease Agreement, Lessor may, at its expense, replace any or all of the Boxcars with similar boxcars upon prior written notice from Lessor to Lessee."
4. A new Subsection 5.G. is added to the Lease Agreement as follows:

"Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL, INC. UNDER THE HELLER FINANCIAL, INC. LOAN AND SECURITY AGREEMENT WITH ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

of boxcars repaired at Lessee's facilities, then Lessee shall pay to Lessor such restitution pursuant to AAR Rule 120 for all boxcars owned or managed by Lessor, including the Boxcars, that were repaired at Lessee's facilities."

5. Effective as of January 1, 1988, with respect to the Cars only, Section 6 of the Lease Agreement is replaced by the following:

"6. Rent

A. Definitions

- (i) 'Eligible Lines' is defined as the railroad lines owned and operated by Lessee as of January 1, 1988. Unless otherwise agreed by Lessor and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the term of the Lease Agreement are deemed to be the lines of another railroad company for the purposes of determining Revenues (as defined in Subsection 6.A.(iii) hereinbelow).
- (ii) 'Revenue Rates' is defined as the hourly and mileage car hire rates prescribed for excluded boxcars under the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19 served September 12, 1986, set forth in the Appendix to such decision in paragraph (c)(3) of 49 C.F.R. 1039.14.
- (iii) 'Per Diem Revenues' is defined as the total per diem revenues earned and collected or due for the use and handling of the Cars, on all railroad lines other than the Eligible Lines, including, but not limited to, per diem (which per diem shall be calculated at the Revenue Rates), whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (iv) 'Mileage Revenues' is defined as the total mileage revenues earned and collected or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, mileage (which mileage shall be calculated at the Revenue Rates), whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.
- (v) 'MTW Cars' is defined as the Boxcars, including the Cars, together with the boxcars bearing the reporting marks MTW 4000-4299.
- (vi) 'Itel Car(s)' is defined as any boxcar(s), other than the MTW Cars, which are owned by Lessor.

(vii) 'Other Car(s)' is defined as any boxcar(s), other than MTW Cars and Itel Cars.

(viii) The 'Utilization Rate' of the MTW Cars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar quarter or applicable portion thereof ('Quarter') that revenues were earned with respect to the MTW Cars, and the denominator of which is the aggregate number of days in such Quarter that the MTW Cars are on lease to Lessee.

(ix) The 'Per Diem Base Rent' is defined as

per calendar quarter. Such amount represents the average Per Diem Revenues which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for _____ hours that such Cars were subject to the Lease Agreement. The Per Diem Base Rent for any Car which is not subject to the Lease Agreement for an entire calendar quarter shall be prorated at

during such calendar quarter.

(x) The 'Base' is defined as

per calendar quarter. Such amount represents the Per Diem and Mileage Revenues which the Cars would have earned in the aggregate if the Cars had been on railroad lines other than Eligible Lines for _____ hours that such Cars were subject to the Lease Agreement during such calendar quarter, with each Car travelling _____ per day. The Base for any Car which is not subject to the Lease Agreement for an entire calendar quarter shall be prorated at

for such Car during such calendar quarter.

B. Each Car becomes subject to the rental commencing January 1, 1988.

C. Lessee agrees to pay the following rent to Lessor for the use of the Cars and Lessor agrees to pay the following amount, if applicable, to Lessee:

(i) In the event Per Diem Revenues earned in any calendar quarter or applicable portion thereof are equal to or less than the Per Diem Base Rent, Lessor shall retain a sum equal to

(ii) In the event the Per Diem Revenues earned in any calendar quarter or applicable portion thereof exceed the Per Diem Base Rent,

(iii)

(iv)

- D. (i) In the event that Lessor shall receive or earn for the use of any Cars, revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified for excluded boxcars as provided in Subsection 6.A (ii), as a result of any action by Lessee, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Per Diem Revenues and Mileage Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.
- (ii) Upon any abatement, reduction or offset as described in Subsections 6.A. (iii) and (iv), Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor for such amounts.
- (iii) If, at any time during the Lease Agreement, Lessee operates lines other than the Eligible Lines, then Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
- E. The calculations required in Subsection 6.C. shall be made within five (5) months after the end of each calendar year ('Final Calculations'). However, Lessor shall, prior to making such calculations, retain the Per Diem Revenues and Mileage Revenues and other payments received by it on behalf of Lessee. Further,

since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsections 6.C. and 6.D., Lessor shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due both parties pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

- F. If, with respect to any Quarter or Quarters, the Per Diem Revenues and Mileage Revenues earned by the Cars, including any amounts Lessor may have allowed to other railroads with respect to such Cars, are less than the Base, Lessor may, at any time, at its option and upon not less than ten (10) days' prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine.
- G. If any Car has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Cars as specified in Subsection 3.B., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Lessee's railroad line and Lessor may terminate such Car from the Lease Agreement upon not less than twenty-four (24) hours notice to Lessee.
- H. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Lease Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.
- I. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Boxcar, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ('Damage Date'). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- J. Lessee shall not enter into any agreement with any other party with respect to the Cars ('Third Party Agreement(s)') without Lessor's prior written approval.

K. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 6."

6. In the event the Lessee exercises its option described in Section 7 of the Lease Agreement to assume from Lessor all record-keeping functions, record of payments, charges and correspondence related to the use of the Boxcars, the last sentence of Section 7 "Following the yearly calculation, one-half of any amount paid to Lessor in excess of the Base Rental shall be deducted by Lessee from subsequent Rental Charges" is replaced by the following:

"Within sixty (60) days of such calendar month, Lessee shall report to Lessor the total hours earned, miles travelled and dollar figure for one hundred percent of the total Revenues for such calendar month. Within five (5) months after each calendar quarter, Lessor shall calculate any amounts due to either party pursuant to Section 6 of the Lease Agreement which remain unpaid and such unpaid amount shall be remitted by the appropriate party within ten (10) days of receiving notification or becoming aware of such unpaid amount."

and new Subsections 6.B.(i) with respect to the Boxcars, excluding the Cars, and 6.E.(i) with respect to the Cars shall respectively be added to the Lease Agreement as follows:

"i. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Boxcars. Such report shall include all repair charges received by Lessee during the previous month. Lessor shall pay to Lessee all sums due pursuant to this paragraph within forty-five (45) days after receipt of such monthly report and maintenance bill."

7. Except as expressly modified by this Amendment, all terms and provisions of the Lease Agreement shall remain in full force and effect.

8. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

MARINETTE, TOMAHAWK AND WESTERN
RAILROAD COMPANY

By: AD Hayes

By: E. L. Bieschke

Title: President

Title: V.P. Gen Mgr

Date: 01-21-88

Date: 12-31-87

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 21st day of January, 198⁸7, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Ginny E. Hanger
Notary Public

STATE OF Wisconsin)
) ss:
COUNTY OF Lincoln)

On this 31ST day of December, 1987, before me personally appeared Elizabeth L. Bieulich, to me personally known, who being by me duly sworn says that such person is Gen Mgr of Marinette, Tomahawk and Western Railroad Company, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. F. Balis
Notary Public