

RECORDATION NO. 13013

MAR 27 1981 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

SEABOARD COAST LINE RAILROAD COMPANY
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

No. MAR 27 1981

Date

Fee \$ 50.00

ICC Washington, D. C.

March 25, 1981

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

1-086A018

Dear Madam Secretary:

There are transmitted to you herewith for filing and recordation, pursuant to 49 U.S.C. Section 11303, six duly executed counterparts of an interim user Agreement dated as of March 25, 1981 between Fruit Growers Express Company, whose address is 1625 K Street, N. W., Washington, D. C. 20006, and Seaboard Coast Line Railroad Company, whose address is 500 Water Street, Jacksonville, Florida 32202, and Louisville and Nashville Railroad Company, whose address is 908 West Broadway, Louisville, Kentucky 40203, which two railroad companies operate, among other lines of railroad, the line known as Clinchfield Railroad Company, leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina.

The equipment covered by this Agreement is:

Six (6) cabooses, bearing the Clinchfield Railroad Company's road numbers 1106 through 1111, inclusive.

By this Agreement, Fruit Growers Express Company permitted the Clinchfield Railroad Company to use the cabooses until the earlier of May 16, 1981 or until permanent financing can be arranged.

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

Countersigned - Frankie Miltore

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

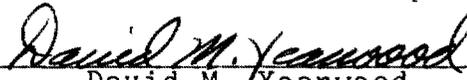
After recordation, please send the recorded counterparts of said Agreement to:

Mr. Robert W. Polster
Corporate Counsel & Secretary
Fruit Growers Express Company
1625 K Street, N. W.
Suite 700
Washington, D. C. 20006

Respectfully yours,

SEABOARD COAST LINE RAILROAD COMPANY
LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Clinchfield Railroad Company)

By



David M. Yearwood
General Attorney

Enclosures

REGISTRATION NO. 13043

MAR 27 1981 - II 5:2 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of March 25, 1981

between

FRUIT GROWERS EXPRESS COMPANY

and

SEABOARD COAST LINE RAILROAD COMPANY,
LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Clinchfield Railroad Company)

Covering

Six (6) Cabooses

THIS AGREEMENT, dated as of March 25, 1981, by and between FRUIT GROWERS EXPRESS COMPANY, a Delaware corporation ("FGE"), and SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation, which two railroad companies operate, among other lines of railroad, the line known as "CLINCHFIELD RAILROAD COMPANY", leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina (which first two named railroad companies are hereinafter individually called SCL and L&N, respectively, and collectively called the "Railroad"):

WITNESSETH:

FGE and the Railroad entered into a Purchase Agreement, dated on or about December 8, 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 at its Alexandria, Virginia plant and deliver to the Railroad at Alexandria, Virginia, or at such other point or points as directed by the Railroad, and the Railroad agreed to accept and pay for:

Six (6) Cabooses, bearing CRR road numbers 1106 through 1111, inclusive (individually a "Caboose" and collectively the "Cabooses").

Delivery of the Cabooses is scheduled to begin March 27, 1981. However, inasmuch as the Railroad 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. The Railroad represents that such financing arrangements will be consummated, however, on or before May 16, 1981. The Railroad (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 the Railroad, and the Railroad hereby accepts from FGE, the Cabooses as of the date each of them is delivered to the Railroad at Alexandria, Virginia, or such other place as may be specified by the Railroad, for the period ending on the earlier of May 16, 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 the Railroad'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. The Railroad, 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, the Railroad 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.

The Railroad 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 the Railroad during the term of this Agreement.

The Railroad's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

The Railroad 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 the Railroad 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". The Railroad 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 Caboose.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Caboose, the Railroad 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 Caboose 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 Caboose. In the event FGE assigns its right to receive the payments herein and/or under the

Purchase Agreement, and the Railroad 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 the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Railroad.

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 the Railroad by the FGE. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad, 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).

The Railroad agrees with FGE that the execution by the FGE of this Agreement or the delivery by FGE to the Railroad of the Cabooses, as contemplated by this Agreement,

shall not relieve the Railroad 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 *A. H. Hilchop*
Vice Pres. - Materials

(Corporate Seal)

Attest:

Frances L. Milton
Legal Administrator

SEABOARD COAST LINE RAILROAD COMPANY

By *W. J. Johnson*
Director of Purchases

(Corporate Seal)

Attest:

[Signature]
Assistant Secretary

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

By *W. J. Johnson*
Director of Purchases

(Corporate Seal)

Attest:

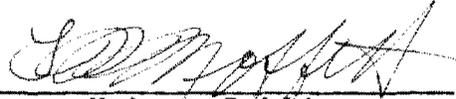
David M. Yearwood
Attesting Officer

DISTRICT OF COLUMBIA)

SS:

CITY OF WASHINGTON)

On this 27th day of March, 1981, before me personally appeared CORNILLICKAP to me personally known, who, being by me duly sworn, says that he is a VICE PRES. - MATERIALS 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.



Notary Public

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

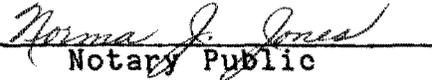
(Notarial Seal)

STATE OF KENTUCKY)

SS:

COUNTY OF JEFFERSON)

On this 25th day of March, 1981, before me personally appeared W. L. Johnson to me personally known, who, being by me duly sworn, says that he is Director of Purchases of SEABOARD COAST LINE 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.


Notary Public

My Commission expires March 4, 1985

(Notarial Seal)

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

On this 25th day of March, 1981, before me personally appeared W. L. Johnson to me personally known, who, being by me duly sworn, says that he is Director of Purchases of LOUISVILLE AND 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.

Norma J. Jones
Notary Public

(Notarial Seal)

My Commission expires March 4, 1985

