



**WISCONSIN & SOUTHERN
RAILROAD CO.**

2215 Sanders Road
Northbrook, IL 60062

(312) 272-8350

RECORDATION NO. 12107-A FILED 1425

April 20, 1982

APR 20 1982 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

Date 4/20/82
Fee 50.00

ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Madam:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and counterparts of a Management Agreement, a primary document, dated April 12, 1982.

The names and addresses of the parties to the enclosed documents are:

Manager: Wisconsin & Southern Railroad Co.
511 Barstow Street
Horicon, Wisconsin 53032

Owner: Transportation Corporation of America
P.O. Box 218
Chicago Heights, Illinois 60411

A general description of the railroad equipment covered by the enclosed documents is, as follows:

One hundred sixty-four (164) 51'6" gondola cars bearing reporting mark and numbers WSOR 5000 through WSOR 5163 inclusive.

The original and all copies of the enclosed documents should be returned to Ms. Sharon Schumacher of Funding Systems Railcars, Inc., 2215 Sanders Road, Suite 370, Northbrook, Illinois 60062.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
April 20, 1982
Page 2

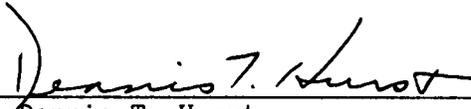
Also enclosed is a remittance in the amount of \$50.00 for payment of recordation fees.

I am an officer of Wisconsin & Southern Railroad Co., and have knowledge of the matters set forth herein.

Very truly yours,

Wisconsin & Southern Railroad Co.

By


Dennis T. Hurst

DTH/sb

Enclosure



APR 20 1982 - ii 05 AM

INTERSTATE COMMERCE COMMISSION

REG. CASE NO. 13107A Filed 1425

2215 Sanders Road
Northbrook, IL 60062
(812) 272-8350

2-11-A031

No. APR 22 1982
Date.....
Fee \$ 40.00

ICC Washington, D. C.

APR 20 1982 - ii 05 AM

April 20, 1982

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Interstate Commerce Commission
12th Street
Room 2303
Washington, D.C. 20423

RE: Management Agreement dated April 12, 1982 between
Wisconsin & Southern Railroad Co. and Transportation
Corporation of America

Dear Ms. Lee:

I have enclosed a new transmittal letter for the above referenced documents you are holding which supercedes our transmittal letter dated April 14, 1982.

Also, please find enclosed a check in the amount of \$40.00. This check plus the check dated April 15, 1982, which you have received, in the amount of \$10.00 equals the filing fee of \$50.00.

If you have any questions please do not hesitate to contact me.

Very truly yours,

Sharon Schumacher

Sharon Schumacher
Contact Administrator

RECEIVED
APR 22 10 00 AM '82
S/SB
I.C.C.
FEE OPERATING

Enclosure

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

This Agreement made this 12 day of April, 1982 by and between Wisconsin and Southern Railroad Company ("Manager"), and Transportation Corporation of America ("Owner"):

WHEREAS, Owner has heretofore purchased and leased to Funding Systems Railcars Leasing Inc. ("FSR") ("Existing Leases"), 164 railroad cars identified within Exhibit A hereto ("Cars"); and

WHEREAS, Manager which is affiliated with FSR shall cause FSR to reject the Existing Leases and the Cars promptly returned to the possession and control of the Manager, which shall retain such possession and control in accordance with the terms of this Agreement; and

WHEREAS, Manager is engaged in the business of managing and leasing railcars for the Manager and other railcar owners, and Owner desires to retain Manager as agent for the purpose of managing the Cars on Owner's behalf on the terms and conditions set forth herein; and

WHEREAS, it is the intention of the parties that the Cars will promptly be the subject of Operating Lease Agreements ("Operating Leases") and short term assignments to be entered into between the Manager and various companies;

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Manager, intending to be legally bound, hereby agree as follows:

1. Engagement of Manager

Subject to all of the terms and conditions set forth herein, Owner hereby engages Manager to manage the Cars, and Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof.

2. Term

(a) The term of this Agreement ("Term") shall commence upon the date hereof and shall continue through the 365th immediately following day, unless terminated sooner in accordance with the provisions of this Agreement. Sections 4(e), 4(j), 4(k), 4(n), 8 and 9 shall remain in effect after such expiration of such period or earlier termination of this Agreement.

(b) This Agreement shall terminate with respect to any Car which is sold by Owner at any date, withdrawn from the

terms of this Agreement in accordance with Section 2(c) hereof, terminated pursuant to Section 10 hereof, lost or totally destroyed, ("Termination") as of the date of such Termination provided, further, however, that notwithstanding any Termination of this Agreement with respect to any Car, Manager shall be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits, and lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of Cars).

- (c) Upon the utilization by a Lessee of any Car or Cars falling below 70% of Full Utilization during any consecutive 3 calendar month period, the Owner may, upon 10 day notice to the Manager, terminate this Agreement as to any or all of the Cars. As used in this Agreement "Full Utilization" shall mean per diem earnings for each calendar day of the calendar month being analyzed, plus full gross off Manager's track earnings at the rate of 1,200 miles throughout that same month being analyzed ("Full Utilization").

3. Procurement of Assignments and Operating Leases

Manager will use its best efforts to seek to procure short term assignments and Operating Leases for each Car. No car may be placed in unit train service or in-plant steel mill service or in any other abusive service. No fixed term or fixed payment utilization agreement having a term in excess of 20 consecutive days may be entered into by the Manager unless such is preapproved in writing by Owner. (Free running service is not considered as fixed term or fixed payment.)

4. Duties of Manager

In consideration of the compensation to be paid to Manager by Owner pursuant to this Agreement, Manager shall provide and perform on behalf of Owner the services set forth below, which services shall be provided and performed during the term of this Agreement at a level or standard of care no less than Manager would use with respect to cars it owns or leases:

- (a) Manager agrees to pay for the maintenance and repair of each Car. All such payments for maintenance and also for repair (except Manager shall not be reimbursed for destruction of Cars or repair of Cars required because of destruction or damage suffered by any Car while that

Car is on track which is at the date of such destruction or damage, owned, leased or under the control of Manager) are to be reimbursed to Manager by Owner from any cumulative monies received and earned by Owner as a result of this Management Agreement within 5 business days following Owner's receipt from Manager of a copy of a paid invoice. Manager shall review, approve, or, if invoice is not both reasonable and proper, reject, and audit each and every such invoice. All such repair and maintenance shall be accomplished promptly and shall be inspected by Manager so as to determine the necessity and quality of such repair and maintenance. Manager shall keep each Car in good order and repair and shall comply with each required safety appliance and construction obligation specified by the Association of American Railroads and the Interstate Commerce Commission. The Manager hereby represents and warrants that each said Car is and shall be on the date it is delivered from FSR to Manager free and clear of all liens and encumbrances caused by the Manager (except any existing lease) and shall be in good operating order and condition and satisfactory for interchange in accordance with Association of American Railroad rules. The Manager shall maintain each Car in a condition that is satisfactory for interchange in accordance with the Association of American Railroads rules, all at Owner's cost and expense and if Lessee shall fail to do so, shall replace any removeable parts, if lost, stolen or broken. All maintenance and repair shall be accomplished in accordance with the Association of American Railroads, Interstate Commerce Commission and Federal Railway Association rules and regulations.

- (b) Register the Cars and file or have filed all required initial and ongoing reports with the Association of Railroads ("AAR"), Interstate Commerce Commission ("ICC"), Department of Transportation ("DOT"), Universal Machine Language Equipment register ("UMLER"), and each other regulatory authority having jurisdiction over the Cars in order to insure that the Cars will at all times be entitled to generate the maximum revenues. Manager shall also file or have filed such documents as are deemed by any Lender to Owner, or the Owner to be necessary for the protection of any security interest under 49 U.S.C. 11303.

- (c) Use its best efforts to collect from the Assignee and the Lessees all payments, mileage allowances and any other revenue due and which are not duly and promptly paid to the Manager or the Owner with respect to the Cars under the Assignments or the Operating Leases and any other sums due to Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit those sums due to Owner as hereinafter provided.
- (d) Maintain the Cars at Owner's expense in a condition which shall be equal to the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, ICC or DOT, or any other regulatory authority having jurisdiction over the Cars, (ii) any standard set by the terms of the Operating Leases and (iii) any standard set by any insurance policy known to Manager, under which the Cars or any of them shall from time to time be insured. Manager will, at Owner's expense, arrange for all alterations, modifications, improvements or additions to the Cars to comply with all applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 10 days after written notice to Owner from Manager thereof and of the estimated cost thereof.
- (e) Manager will use its best efforts to cause each car in need of repair to be transported to the repair facility by Manager at no cost to Owner ("Repair Transport"). In all events Manager will pay and absorb all Repair Transport costs which are in excess of maximum charge now specified in Rule 5 of the AAR Code of Car Service Rules and Interpretations but that excess of maximum charge shall not exceed the cost of such Repair Transport to the most reasonably then available full service repair facility.
- (f) Manager must inform Owner when any Car is in need of anything but a running repair. Within 5 days of receipt of such notice Owner may direct that Car or those Cars to be repaired at a facility of Owner's choice. In the event the cost of such repair transport exceeds the cost of transporting to the most reasonably available full service repair facility, that excess cost of transport shall be paid by Owner.

- (g) Pay on behalf of Owner (all such payments to be reimbursed to Manager) all taxes, charges, assessments, or levies imposed upon or against the Cars other than taxes, charges, assessments or levies payable by and chargeable to the Lessee under the Operating Leases or otherwise, or which are measured by Owner's or Manager's income, of whatever kind or nature.
- (h) Maintain or have maintained separate, complete and accurate books and records of transactions of maintenance, mileage and movement relating to the Cars in the same form and to the same extent as customary in the railcar leasing management business, and retain such books and records for a period of no less than three (3) years and such books and records shall remain available for inspection by Owner or any of Owner's representatives, upon forty-eight (48) hours written notice, during reasonable business hours, and allow Owner to make photocopies thereof at Owner's expense.
- (i) Upon end of Term or upon Termination with respect to any and all Cars, Manager shall within 30 days of the date Owner demands return of Cars, cause those Cars which are the subject of such termination, to be returned, all expenses, switching costs and freight prepaid, to a location designated by Owner and stored upon Owner's direction for a period of not more than 90 days, all at Manager's expense. Manager shall use its best efforts to accomplish any such return to be accomplished on an income generating basis and as promptly as requested by Owner. However, if Manager is not reasonably able to accomplish such a return within the time period specified by Owner on an income generating basis, that return shall be accomplished at a cost to Manager not to exceed all costs, switching charges, expenses and charges applicable to such car or cars for such return from Milwaukee, Wisconsin to Owner's plant in Chicago Heights, Illinois ("Return Costs"). The parties agree that court ordered specific performance of the Manager's obligations under this Section 4(i) is the proper remedy if Manager fails to perform and that money damages for such failure to perform is not an adequate remedy. (If return of the Cars is directed by Owner for any reason other than sale of the Cars by the Owner within the first 3 months of the term of this Agreement, the Manager shall be obligated to pay only 50% of the Return Costs. If return of the Cars is directed by Owner within the first 6 months of the term of this Agreement because of

sale of the Cars by the Owner, the Manager shall not be obligated to pay any of the Return Costs.

- (j) Collect in trust for Owner, or have Lessees or users collect, all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and account for and promptly remit those sums. If, in order to collect sums due Owner, Manager and Owner deem it necessary to retain the services of outside counsel or other experts, (each of whom must be acceptable to Owner,) the expenses of such counsel or other experts shall be borne 10% by Manager and 90% by Owner.
- (k) None of the Cars shall be placed in service outside the United States of America. However, any one or more of the Cars may be placed in service in Canada for no more than 45% of any six month period.
- (l) In the event that Owner is a party to any legal action arising out of its Ownership of the Cars, Manager will promptly provide Owner with written notice of such action.
- (m) Consult with Owner prior to exercising any right to terminate any Lease and abide by Owner's decision as to whether or not such termination is in Owner's best interest.
- (n) The total number of gondola railroad cars managed, owned, leased or dealt with by the Manager shall not exceed 364 at any time during the term of this Agreement.
- (o) The total number of gondola railroad cars managed, owned, leased or dealt with by the parent, subsidiaries or affiliates of the Manager shall not exceed 726 at any time during the term of this Management Agreement (exclusive of the 364 Cars to be managed by the Manager in accordance with subsection (n) hereof).
- (p) While any Car which is the subject of this Agreement remains unused during the term of this Agreement, that Car will be stored, at no cost to Owner, on Manager's track.

5. Rent Payments

Within 5 days after the end of each calendar month, Manager shall remit to Owner all rents and other sums it has received (funds shall be deemed received upon collection by Manager's depository) and to which Owner is entitled pursuant to this Agreement. Until so remitted to Owner all such monies received by Manager will be accounted for in a separate ledger by Manager, as trustee for Owner, until final payment thereof is made to Owner in accordance with this Management Agreement ("Owner's Rent Account"). All monies held in the Owner's Rent Account shall accrue interest at the same rate as reasonably available to Manager for such funds for overnight investments through the Continental Illinois National Bank and Trust Company of Chicago, from date such monies are received by Manager to the date such monies are paid to Owner. All interest theretofore so accrued shall be paid to Owner by Manager on the same date the rent payments are due the Owner hereunder.

All Operating Leases shall provide that all rent payments including mileage and per diem allowances shall be made by Lessee under any Operating Lease directly to the Owner or to the assignee or nominee of the Owner. Manager may reclaim during any one calendar month a maximum of three days per diem per Car earned by that Car during that calendar month in which such Car is carrying freight intraline over its track.

6. Fee to Manager

The Manager shall be entitled to the following fee ("Management Fee"):

- (a) Manager shall receive 10% of gross rent (net of all per diem reclaims and transportation costs) ("Net Rent") collected and received by Owner for utilization of the Cars during the term of this Agreement on that portion of the utilization of the Cars which average 80% of Full Utilization or less during the term of this Agreement;
- (b) On that portion of the utilization of the Cars which exceeds 80% of Full Utilization during the term of this Agreement, Manager shall receive 50% of Net Rent collected and received by Owner.

7. Payment of Management Fee.

The monies to be remitted monthly by Manager to the Owner pursuant to Section 5 hereof shall be reduced by the Management Fee then due and owing the Manager pursuant to Section 6 hereof. In the event Owner receives any rent payments (including but not limited to mileage and per diem allowances) directly, Owner shall pay Manager the Management Fee arising therefrom. That payment shall be made within 10 days after Owner's receipt of such payment.

8. Subordination

This Agreement and Manager's authority and rights hereunder are subject to the lien and security interest of each and every Lender to Owner secured by the Cars and revenues generated by the Cars.

9. Reports

Manager shall monitor and record fleet movements of the Cars under Manager's normal procedures and provide Owner with written reports thereof every month and Manager will make every reasonable effort to provide Owner with such reports every two weeks.

Manager shall, within 160 days following the end of each calendar month during the term of this Agreement, submit to Owner a written report of the activity of the Cars. This report will summarize for the Cars for such service month (i) amounts earned and the amounts paid for the use of the Cars; (ii) the nature of the amounts earned and the amounts paid for the use of the Cars, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue, specifying the source; (iii) amounts outstanding from prior months; (iv) Operating Expenses; (v) management fees; and (vi) amounts remitted to Owner or payable to Manager pursuant to this Agreement.

Manager shall, within 85 days following the end of each calendar year during the term of this Agreement, submit a statement to Owner signed by an executive officer of Manager (i) setting forth as of that calendar year end the amount, description and numbers of all Cars then subject to this Agreement; the amount, description and numbers of all Cars that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); and such other information regarding the condition and state of repair of the Cars as

the Owner may reasonably request; (ii) stating that, in the case of all Cars repaired or repainted during the period covered by such statement, and to the best of Manager's knowledge, the proper number and markings have been preserved or replaced; (iii) certifying that all amounts to be remitted hereunder by Manager to Owner through the preceding December 31 have been remitted, or if any have not been remitted, identifying such unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of Manager's knowledge after reasonable inquiry, Lessee is in compliance with all of the provisions of the Leases and that all amounts required to be paid to Owner under the Leases have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; (v) stating that to the best of Manager's knowledge the Cars have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Cars; and (vi) setting forth such additional information as Owner may reasonably request.

Manager shall notify Owner within 5 business days after becoming aware of (i) the occurrence of any major casualty which would cause any Car to be taken out of service for over 45 days; (ii) the occurrence of any event which would be an event of default on the part of a Lessee under any Lease; (iii) the occurrence of any event which would enable Owner to terminate any Lease with respect to any Cars.

10. Events of Default

- (a) The occurrence of any of the following events shall be an event of default:
 - (i) The non-payment or failure to remit, by Owner or Manager to the other of a total amount in excess of \$100 required herein to be paid or remitted within 10 days after any such payment or remittance is due. Notwithstanding the foregoing, the non-payment or non-remittance of such sum shall not relieve either party of the obligation to pay or remit any amounts then accrued hereunder.
 - (ii) The breach or non-fulfillment by Manager or Owner of any other term, covenant or condition of this Agreement, which is not cured within 10 days after written notification to the offending party of such breach or non-fulfillment.

(b) Upon the occurrence of any event of default by a party hereunder, the other party may, at its option, terminate this Agreement by delivering to the defaulting party written notice of such termination and may, in addition, pursue any other remedy available at law or in equity.

11. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Manager: Wisconsin and Southern Railroad Company
501 East Lake Street
P.O. Box A
Milwaukee, Wisconsin

Attention: President

Copy to: Funding Systems Railcars, Inc.
Attn: James B. Shein
2215 Sanders Road
Northbrook, IL 60062

If to Owner: Transportation Corporation of America
P.O. Box 218
Chicago Heights, Illinois 60411

Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

12. Miscellaneous

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and Manager and Owner hereby consent to the jurisdiction of the courts of the State of Illinois.

13. Miscellaneous

(a) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- (b) Headings. Titles and headings of the Sections and Subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.
- (c) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.
- (d) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.
- (e) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, Manager shall have no authority to bind Owner or incur any liability for which Owner may be responsible without the prior written consent of Owner.
- (f) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST:

TRANSPORTATION CORPORATION OF AMERICA

"Owner"


 Assistant Secretary

By: 
 President

(CORPORATE SEAL)



ATTEST:

WISCONSIN AND SOUTHERN
RAILROAD COMPANY
"Manager"

Jennie T. Hurst
Secretary

By: James B. Heis
President CHAIRMAN & C.E.O.

(CORPORATE SEAL)

EXHIBIT A

DESCRIPTION OF CARS

Manufacturer:	THRALL CAR MANUFACTURING COMPANY
Description of Equipment:	164 ITEMS OF EQUIPMENT --- EACH BEING A 100-TON, 51'6" GONDOLA CAR
Specifications:	GN-100-52-255
Car Numbers:	WSOR-5000 to WSOR-5163, BOTH INCLUSIVE