

November 28, 1988

1 6060/A
RECORDATION NO. _____ FILED 1988
DEC 6 1988 3 20 PM
INTERSTATE COMMERCE COMMISSION
Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133
(415) 984-4000
(415) 781-1035 Fax

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

Re: Schedule No. 1 to Master Lease Agreement No. 2233-00 dated November 22, 1988, between Itel Rail Corporation, Itel Railcar Corporation and Green Bay and Western Railroad Company

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule No. 1 under Master Lease Agreement No. 2233-00, between Itel Rail Corporation, Itel Railcar Corporation and Green Bay and Western Railroad Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

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

Green Bay and Western Railroad Company (Lessee)
P. O. Box 2507
Green Bay, Wisconsin 54306

This Schedule covers fifteen (15) 60'8", Plate E, XP boxcars bearing reporting marks GBW 375400-375517 (n.s.).

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
Legal Department

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[LOT NO. 2233-01]

DEC 6 1988 3 20 PM SCHEDULE NO. 1

~~INTERSTATE COMMERCE COMMISSION~~

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of November 22, 1988 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and GREEN BAY AND WESTERN RAILROAD COMPANY, as lessee ("Lessee") is made this 22nd day of November, 1988, between ITEL RAIL CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Numbers	Length	Dimensions			No. of Cars
				Inside Width	Height	Doors Width	
XP	Box, Steel, Cushion underframe, 50K Plate E	GBW 375400- 375517 (non- sequential)	60'8"	9'6"	11'6"	16"	15

3. A. The term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is remarked ("Delivery") and shall continue as to all of the Cars described in this Schedule for one (1) year from the earlier of (i) the date on which the last Car described in this Schedule was remarked or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered to Lessee's lines (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, ninety (90) days prior to the expiration date of the Agreement with respect to the Cars described in this Schedule, Lessor and Lessee will attempt to negotiate in good faith new terms and conditions for the renewal of the Agreement as it applies to this Schedule ("Renewal Terms"). If Lessor and Lessee have agreed to Renewal

Terms, then the Agreement will be extended with respect to all of the Cars described in this Schedule under such Renewal Terms. In the event that upon the expiration date of the Agreement as it applies to this Schedule, Lessor and Lessee have not agreed to Renewal Terms, then the Agreement will expire with respect to all of the Cars described in this Schedule.

4. When a Car has been remarked, it shall be moved to Lessee's railroad line at no initial cost to Lessee at the earliest time that is consistent with the mutual convenience and economy of the parties. Lessee agrees to pay the rent set forth in the Agreement notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.
5.
 - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER placing the letters designated by Lessor in owner's field in such a manner that Lessor, or its agent, is allowed access to any required information including but not limited to Train 62 Junction Advices and the Train 65, 67, 71 and 80 Advices with regard to each Car. If Lessee fails to register or improperly registers any Car in UMLER, Lessee shall be responsible for an amount equal to the revenues that would have been earned by such Car had it been properly registered in UMLER.
 - B. 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 Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be

responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Unless Lessor and Lessee agree otherwise, any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party, effective on the date of such sale, during the Initial Term or any Extended Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenues Rates" is defined as the hourly and mileage car hire rates specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1988 edition of The Official Railway Equipment Register, as may be updated from time to time.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned 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 and mileage, 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) "Initial Loading" of a Car shall be the earlier to occur of either: 1) the date such Car shall have been loaded off Lessee's railroad line with the first load of freight; or 2) the thirty-first (31st) day after such Car is first received on Lessee's lines.

- B. Lessor shall receive all Revenues earned by each Car prior to its Initial Loading. Each Car delivered pursuant to Subsection 3.A. of the Agreement shall become subject to the rental calculation under Subsection 8.C. hereinbelow upon the Initial Loading of such Car; provided, however, that Lessor shall retain and be entitled to all Revenues earned by such Car after such Initial Loading, including any Revenues due Lessee pursuant to Subsection 8.C. ("Lessee's

Revenue Share"), until the total amount of Lessee's Revenue Share retained by Lessor shall have become equal to Lessor's expenses for remarking and delivering such Car to Lessee ("Delivery Expense").

C. Lessee agrees to pay rent to Lessor for the Cars calculated as follows:

- (i) While the Cars are on the Eligible Lines,
for such Cars had they been in the physical possession and use of another railroad; provided, however, that
per calendar month ("Maximum Hours"). If, during any calendar month, the Cars in the aggregate remain on the Eligible Lines in excess of the Maximum Hours,

(ii)

purusant to Subsection 8.C.(i) hereinabove.

D. (i) In the event that as a result of any action or inaction by Lessee, 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 in Subsection 8.A. (ii), Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, 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. Any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void

without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

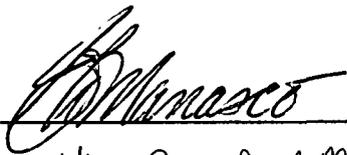
- F. The calculations required in Section 8 shall be made within five (5) months of the end of each calendar year ("Final Calculations"). Lessee shall pay to Lessor by the sixtieth (60th) day after the end of each Service Month (as hereinafter defined), eighty percent (80%) of the total revenues for that Service Month. For the purposes hereof, "Service Month" shall be defined as the calendar month in which revenues were actually earned. At the time payment of eighty percent (80%) of the total revenues is made to Lessor, Lessee shall report to Lessor for the same month the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the revenues. Ten percent (10%) of the revenues shall be remitted to Lessor within ninety (90) days after the end of each Service Month and the remaining ten percent (10%) of the total revenues shall be remitted to Lessor within one hundred twenty (120) days after the end of each Service Month. Lessor shall within three (3) months of the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculations, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.
9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control, or would be the "handling carrier's" responsibility under the Interchange Rules, as if the Cars were not bearing Lessee's reporting marks.
- B. Except as provided in Subsection 9.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.
- The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
10. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which

is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.

11. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
12. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

GREEN BAY AND WESTERN RAILROAD
COMPANY

By: 
Title: Vice President Marketing
Date: November 22, 1988

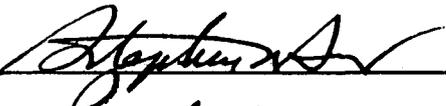
By: 
Title: President
Date: 11-16-88

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of _____ to Lease Agreement dated as of _____, by and between ITEL RAIL CORPORATION ("Lessor") and GREEN BAY AND WESTERN RAILROAD COMPANY ("Lessee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be

_____.

ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EXHIBIT B

Running Repairs: Boxcars

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement of Door)	

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

E. LOYD MANASCO *VICE PRESIDENT MARKETING*

On this 22nd day of November, 1988, 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 Schedule No. 1 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 of corporation.

Sharon L. Van Fossan
Notary Public



STATE OF Wisconsin)
) ss:
COUNTY OF Drown)

On this 16 day of November, 1988, before me personally appeared *Stephen P. Kelly*, to me personally known, who being by me duly sworn says that such person is President of Green Bay and Western Railroad Company that the foregoing Schedule No. 1 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 of corporation.

Carol L. Kello
Notary Public
CE 6/9/92.