

0-023A049



Itel Rail Corporation

55 Francisco Street
San Francisco, CA 94133
(415) 984-4000
(415) 781-1035 Fax

RECORDATION NO. 10129-Q FILED 1425

JAN 23 1990 12:20 PM

INTERSTATE COMMERCE COMMISSION

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

**Re: Amendment No. 9 to Lease Agreement dated July 26, 1978,
between Itel Rail Corporation and Minnesota, Dakota and
Western Railway 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 \$15 recordation fee.

Please record this Amendment under the Lease Agreement dated July 26, 1978, between Itel Rail Corporation and Minnesota, Dakota and Western Railway Company, which was filed with the ICC on February 22, 1979, under Recordation No. 10129.

The parties to the aforementioned instrument are listed below:

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

Minnesota, Dakota and Western Railway Company (Lessee)
One Jefferson Square
Boise, Idaho 83728

This Amendment replaces Schedule A with Schedule A.1 upon completion of the change in mechanical designation of ninety-six (96) boxcars from "XM" to "XP." Schedule A.1 identifies ninety-six boxcars bearing reporting marks MDW 9000-9099 (n.s.) and one hundred eighty-five boxcars bearing reporting marks MDW 10000-10199 (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
Patricia Schumacker
Legal Assistant

10/29-8

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AMENDMENT NO. 9

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 9 ("Amendment") to that certain Lease Agreement, as amended (the "Agreement"), made as of July 26, 1978 between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division, as lessor ("Lessor"), and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, as lessee ("Lessee"), is made this 8 day of Sept, 1989 between Lessor and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement pursuant to which seven hundred seventy-seven (777) boxcars have been leased and delivered to Lessee and ninety-eight (98) boxcars are still being delivered to Lessee (such boxcars, together with the boxcars listed on the Equipment Schedule attached hereto, the "Boxcars").
- B. Lessor and Lessee desire to modify the ninety-six (96) Boxcars bearing the reporting marks MDW 9000-9099 (the "Designated Boxcar(s)") from the XM mechanical designation to the XP mechanical designation and to place a number of such Cars into an assignment pool on the lines of a third party for a period of time.
- C. The parties desire to extend the term of the Agreement with respect to the Designated Boxcars.

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

- 1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
- 2. Lessor shall, at its expense, change the mechanical designation of each Designated Boxcar from "XM" to "XP" ("Modification") in accordance with the Association of American Railroad's Interchange Rules.
- 3. Upon the Modification of the last Designated Boxcar, Schedule A to the Agreement shall be deleted in its entirety and shall be replaced by Schedule A.1. attached hereto, which describes the Designated Boxcars and the one hundred eighty-five (185) XM Boxcars bearing reporting marks from within the series MDW 10000-10199.
- 4. With respect to the Designated Boxcars only, the last sentence of Subsection 2.A. of the Agreement is replaced by the following:

"The term of the Agreement shall commence on the date each of the Boxcars bearing the reporting marks MDW 9000-9099 was delivered to Lessee pursuant to the terms of the Agreement and shall expire as to all Designated Boxcars on October 29, 1992."
- 5. Lessor hereby consents to Lessee entering into an assignment agreement with The Atchison, Topeka and Santa Fe Railway Company in the form of Exhibit A attached hereto ("the Second ATSF Assignment"), provided that Lessor

shall perform Lessee's duties under the Second ATSF Assignment, except the duties described in Section 5 therein, which shall be performed by Lessee, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Second ATSF Assignment, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Second ATSF Assignment to any party designated by Lessor.

6. With respect to the Designated Boxcars only, during the term of the Second ATSF Assignment only, Subsections 7.A.(i) and 7.A. (ii) of the Agreement are replaced by the following:

" (i) Subject to adjustments for Lessee providing insurance for the Boxcars as provided in Subsection 6.C. of the Agreement, Lessor shall receive all payments including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as 'Payments') made to Lessee by other railroad companies for their use or handling of the Designated Boxcars if the Payments earned by the Designated Boxcars in the aggregate for any calendar year are equal to or less than an average of

per Designated Boxcar (such amount shall be known as the 'Base Rent'). The Base Rent shall be prorated at per day for any Designated Boxcar not subject to the Agreement for an entire calendar year. For the purpose of this Agreement, Utilization of the Designated Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Payments are earned by Lessee on the Designated Boxcars, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each year that the Designated Boxcars are on lease to Lessee, commencing from the Initial Loading.

(ii) In the event that the Payments earned by the Designated Boxcars in the aggregate during any calendar year exceed the Base Rent, Lessor shall receive an amount equal to the Base Rent and Lessee, subject to Lessor retaining all Payments due Lessee in excess of the Base Rent ("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 delivering each Designated Boxcar to the railroad lines of The Atchison, Topeka and Santa Fe Railway Company,

Base Rent."

7. With respect to the Designated Boxcars only, during the term of the ATSF Assignment only, Subsection 7.A. (viii) is hereby added to the Agreement as follows:

" (viii)

"

8. During the term of the Second ATSF Assignment Agreement only, the reporting marks and numbers "MDW 9000-9099 in Subsection 7.D. of the Agreement shall not apply.
9. Except as to the _____ as provided in the Second ATSF Assignment, nothing herein contained shall (i) be deemed to constitute a waiver or otherwise modify, affect or impair any sums due to Lessor or Lessee with respect to any Boxcar, including the Designated Boxcars, under the terms and conditions of the Agreement or (ii) be deemed to constitute a waiver or otherwise modify, affect or impair the powers, rights or remedies vested in or available to Lessor or Lessee with respect to any Boxcar under the terms and conditions of the Agreement.
10. Except as expressly modified by this or any other Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.
11. This Amendment 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

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: *J. Manasco*

By: *R. W. Walker*

Title: *SR VICE PRESIDENT, MARKETING*

Title: *Vice President*

Date: *January 12, 1990*

Date: *9-8-89*

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

On this 12th day of January, 198~~8~~⁹, before me personally appeared E. LOYO MANASCO, to me personally known, who being by me duly sworn says that such person is SR VICE PRESIDENT, MARKETING of Itel Rail Corporation, that the foregoing Amendment No. 9 to Lease Agreement 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.

Sharon L. Van Jossan
Notary Public

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

On this 8th day of September, 1989, before me personally appeared Robert W. Walters, to me personally known, who being by me duly sworn says that such person is Vice President of Minnesota, Dakota & Western Railway Company, that the foregoing Amendment No. 9 to Lease Agreement 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.

Robb Lewis
Notary Public

SCHEDULE NO. A.1.

ITEL RAIL CORPORATION hereby leases the following Boxcars to MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY subject to the terms and conditions of that certain Lease Agreement dated as of July 26, 1978, as amended.

AAR Mech Desig.	Description	Numbers	Length	Dimensions			Doors Width	No. of Cars
				Inside Width	Height			
XP	50' Boxcars, 70-Ton, Plate C, End of Car Cushioning, Single Sheath, Exterior Post Design, Nailable Steel Floor	MDW 9000-9022, 9024-9027, 9029-9040, 9042-9075, 9077-9099	50'6"	9'6"	11'	10' Plug	96	
XM	50' Boxcars, 70-Ton, Plate C, End of Car Cushioning, Single Sheath, Exterior Post Design, Nailable Steel Floors	MDW 10000-10006, 10008-10013, 10015-10038, 10040-10062, 10064-10089 10091-10100, 10102-10126 10128-10131, 10133-10165, 10168-10175, 10178-10187, 10189-10190, 10193-10199	50'6"	9'6"	11'	6' Plug and 10' Sliding	185	

This Equipment Schedule replaces Schedule A dated June 22, 1976, to the Agreement.

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN RAILWAY
COMPANY

By: *B. Manasco*

By: *R. W. Walters*

Title: *SR VICE PRESIDENT, MARKETING*

Title: *Vice President*

Date: *January 12, 1990*

Date: *9-8-89*

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

On this 12th day of January, 1988, before me personally appeared E. LOYD MANASCO, to me personally known, who being by me duly sworn says that such person is SR VICE PRESIDENT, MARKETING of Itel Rail Corporation, that the foregoing Schedule A.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 corporation.


Notary Public

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

On this 8th day of September, 1989, before me personally appeared Robert W. Walters, to me personally known, who being by me duly sworn says that such person is Vice President of Minnesota, Dakota & Western Railway Company, that the foregoing Schedule A.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 corporation.


Notary Public

EXHIBIT A

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this 1st day of NOVEMBER, 1989 between MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Assignor") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mechanical Designation	Description	Reporting Marks and Numbers	No. of Cars
XP	50', Plate C, 70-Ton Boxcars with 10' Plug Doors	MDW 9000-9022, 9024-9027, 9029-9040, 9042-9050 9051-9075, 9077-9099	-48 96

*DBT
RWW*

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. The term ("Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines after the full execution of this Assignment Agreement and shall expire as to all of the Cars on October 29, 1992.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
6. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is fully executed. Any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by ~~Assignor~~ to another party, effective on the date of such sale,

ASSIGNEE

*DBT
RWW*

during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.

7. Assignee shall be entitled to _____ for each Car while such Car is on the Eligible Lines for up to _____ ("Month"), provided, however, that the total amount of _____ for any Month does not exceed the total actual hours that the Cars, in the aggregate, were empty on the Eligible Lines during such Month. Assignee shall provide to Assignor car location movement ("CLM") records on a daily basis.
8. Within thirty (30) days after each Month, Assignee shall provide Assignor with a summary ("Monthly Summary") which lists each Car reporting mark and number and the date such Car was interchanged onto or off the Eligible lines during such Month. Reclaim with respect to this Assignment Agreement shall be handled in accordance with the Association of American Railroads ("AAR") Car Hire Rule 13, paragraph (d).
9. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.
10. Assignor is responsible for normal maintenance and repair expenses except as provided below. Assignee shall be responsible for and shall pay all costs and expenses associated with maintenance and repair, including transportation costs, in the event such maintenance (i) was occasioned by the fault of Assignee; (ii) results from loading, unloading or use on the Eligible Lines; or (iii) arises in those instances in which the Interchange Rules would assign responsibility to Assignee for the loss, damage, destruction or liability requiring such Maintenance. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any Car required to be shopped for repairs, Assignee shall request the disposition and handling instructions from Assignor; and from and after the date of such request, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules 7 and 8. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.
11. Upon expiration or termination of this Assignment Agreement, Assignee shall insure that Cars are in interchange condition, normal wear excepted, and shall remove the Cars from Car Service Directive 145. Thereafter, Assignee shall use its best efforts to provide final outbound loads for each Car. At Assignor's option, Assignee shall grant up to one hundred twenty (120) days free storage for each such Car commencing on the latter of the expiration or termination date or the date such Car is returned to Assignee's line subsequent to such expiration or termination, or shall deliver, at Assignee's expense, each such Car to any interchange point on Assignee's lines designated by Assignor. Assignor shall designate in

writing an interchange point on the Assignee's lines not less than twenty (20) days prior to the expiration of the storage period described herein. Within fifteen (15) days of such notice, Assignee shall begin movement of the Cars to the designated interchange point. For each Car that has not begun movement to the interchange point within such fifteen (15) day period, all applicable per diem and mileage charges will apply in accordance with the Car Hire Rules of the AAR. For each Car for which a final outbound load is provided, Assignor shall grant per diem and mileage relief to Assignee until the hour such Car is interchanged off Assignee's railroad lines.

12. Assignee's rights shall be subject and subordinate to the rights of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
13. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Minnesota, Dakota & Western
Railway Company
c/o ITEL Rail Corporation
55 Francisco, 5th Floor
San Francisco, California 94133
Attention: Manager, Car Hire Accounting

If to Assignee:

The Atchison, Topeka and Santa Fe Railway Company
~~80 East Jackson Blvd.~~ 4515 Kansas Ave.
~~Chicago, Illinois 60604~~ Kansas City, Kansas 66106
~~Attention: President~~ Attn: Director Fleet Management

14. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

15. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

MINNESOTA, DAKOTA & WESTERN RAILWAY
COMPANY

By: R. W. Walters

Title: Vice President

Date: 9-8-89

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: R. E. Williams

Title: Director - Fleet Management

Date: 11-7-89