



**Itel Rail Corporation**

550 California Street  
San Francisco, CA 94104  
(415) 884-4200

December 13, 1990

Hon. Sidney L. Strickland, Jr., Esq.  
Secretary

Interstate Commerce Commission  
Washington, DC 20423

10/29-R  
RECORDATION NO. 10129-1000

DEC 14 1990 - 10 00 AM

0-348A008

INTERSTATE COMMERCE COMMISSION

**Re: Amendment No. 10**

Dear Mr. Strickland:

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)  
550 California Street  
San Francisco, California 94104

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

Under this Amendment Lessor consents to Lessee entering into an assignment agreement with The Atchison, Topeka and Santa Fe Railway Company for one hundred (100) boxcars bearing reporting marks MDW 1700-1799, and a boxcar use agreement with Canadian Pacific Railways for forty-four (44) boxcars bearing reporting marks MDW 10005-10408 (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 Assistant

10129-R

DEC 14 1990 - 10:55 AM

AMENDMENT NO. 10  
INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 10 ("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 as of this \_\_\_\_\_ day of \_\_\_\_\_, 1990, between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor has leased to Lessee a number of boxcars as described on the Equipment Schedules attached to the Agreement (the "Boxcars").
- B. Through Amendment No. 5 dated October 24, 1986 ("Amendment No. 5"), Lessor consented to Lessee's entering into the assignment agreement that was fully executed on September 24, 1986 between Lessee as assignor and The Atchison, Topeka and Santa Fe Railway Company ("ATSF") as assignee with respect to the 100 Boxcars marked MDW 1700-1799 (the "ATSF Assignment"). The ATSF Assignment expired on May 7, 1990.
- C. Lessee has entered into an assignment agreement dated July 10, 1990 with ATSF, attached as Exhibit A, which incorporates the terms of the ATSF Assignment with respect to MDW 1700-1799 (the "1990 ATSF Assignment").
- D. Lessee desires to assign 44 Boxcars (the "CN Boxcars") to the Canadian National Railways under the terms of the Boxcar Use Agreement attached as Exhibit B (the "CN Agreement").

NOW, THEREFORE, 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 hereby consents to Lessee entering into the 1990 ATSF Assignment and the CN Agreement subject to the terms of this Amendment.
- 3. During the term of the 1990 ATSF Assignment, the words "ATSF Assignment" in Amendment No. 5 shall refer to the 1990 ATSF Assignment and the Boxcars marked MDW 1700-1799 shall be subject to the applicable provisions of Amendment No. 5.
- 4. Lessor consents to Lessee's entering into the CN Agreement provided that Lessor shall perform Lessee's duties under the CN Agreement, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the CN Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the CN Agreement to any party designated by Lessor.
- 5. During the term of the CN Agreement, the CN Boxcars shall be modified from

XM to XP.

6. 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.
7. 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.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN  
RAILWAY COMPANY

By: Robert Keenan  
Title: Vice President Finance & Administration  
Date: 7/31/90

By: R. W. Walker  
Title: Vice President  
Date: 8-6-90

EXHIBIT "A"

**BOXCAR ASSIGNMENT AGREEMENT**

THIS BOXCAR ASSIGNMENT AGREEMENT (the "Assignment Agreement") is entered into as of this 10th day of JULY, 1990, by and between MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Assignor") and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ("Assignee").

**RECITALS:**

- A. Assignor and Assignee are parties to the assignment agreement attached as Exhibit A (the "1986 Agreement") which was fully executed on September 24, 1986.
- B. Pursuant to the 1986 Agreement, Assignor provided Assignee with 100 fifty-foot, 100-ton, Plate F XP boxcars bearing reporting marks from within the series MDW 1700-1799 (the "Cars").
- C. The 1986 Agreement expired on May 7, 1990.
- D. Assignor and Assignee desire to enter into this Assignment Agreement with respect to the Cars on the same terms and conditions as those in the 1986 Agreement except as specifically provided otherwise herein.

NOW, THEREFORE, the parties incorporate the terms of the 1986 Assignment Agreement by reference, with the following changes for the purposes of this Assignment Agreement:

- 1. "Assignment Agreement" as used in this document shall mean this Assignment Agreement and any amendments hereto.
- 2. The term of this Assignment Agreement shall commence retroactively to May 8, 1990 and shall continue through May 7, 1993 (the "Term").
- 3. Effective May 8, 1990, the first sentence of paragraph 4 of the 1986 Agreement is deleted in its entirety.
- 4. Any notices required or permitted to be given pursuant to the terms of this Agreement shall be deemed given when given by telecopy or telex or made in writing, deposited in United States mail, registered or certified, postage prepaid, addressed to:

Assignor: Minnesota, Dakota & Western Railway Company  
550 California Street  
San Francisco, California 94104  
Attention: Director, Car Hire Accounting

Assignee: The Atchison, Topeka and Santa Fe Railway Company  
80 East Jackson Blvd.  
Chicago, Illinois 60604  
Attention: Mr. John Turpinat  
Manager Boxcar, Automotive and Military  
Fleet

or to such other addresses as Assignor or Assignee may from time to time designate.

MINNESOTA, DAKOTA & WESTERN  
RAILWAY COMPANY

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By: Robert W. Wallace

By: K. E. Williams

Title: Vice President

Title: Director-Fleet Management

Date: 7-19-90

Date: July 10, 1990



Minnesota, Dakota & Western Railway Company

P.O. Box 7747  
Boise, Idaho 83707

a Boise Cascade  
Subsidiary

EXHIBIT A

Mr. Donald G. McInnes  
General Superintendent, Transportation  
The Atchison, Topeka and Santa Fe Railway Company  
80 East Jackson Blvd.  
Chicago, Illinois 60604

Dear Mr. McInnes:

Please accept this letter as the agreement ("Assignment Agreement") whereunder Minnesota, Dakota & Western Railway Company ("Assignor") shall supply The Atchison, Topeka and Santa Fe Railway Company ("Assignee") with one hundred (100) fifty-foot, 100 ton, Plate F, XP boxcars bearing reporting marks within the series MDW 1700-1799 ("Boxcars"). Assignee shall place all assigned Boxcars into an assignment pool on its railroad lines under Car Service Directive 145.

The term of this Assignment Agreement, with respect to each Boxcar, shall commence on the date and at the location such Boxcar is delivered to and accepted by the Assignee and shall expire as to all the Boxcars three (3) years from the date the last Boxcar is delivered to and accepted by the Assignee ("Initial Term"). This Assignment Agreement shall be extended only upon the mutual agreement of the parties (such extended period an "Extended Term").

It is understood and agreed that during the Initial Term and any Extended Term of this Assignment Agreement, Assignee's only obligation with regard to the Boxcars placed into assigned pool service hereunder shall be (i) compliance with the handling carrier's obligations under AAR Interchange Rules while the Boxcars are in Assignee's possession, and (ii) the fulfillment of its obligations upon the expiration or termination of this Assignment Agreement as set forth herein. Assignee shall not place the Boxcars into the assignment pool prior to receiving Assignor's consent to do so.

Assignee shall receive full per diem and mileage reclaim for each Boxcar commencing on date such Boxcar is first interchanged to Assignee's lines through and including the earlier of (a) the date such Boxcar is first loaded with freight on Assignee's lines or (b) the thirty-first (31st) day after such Boxcar is first interchanged to Assignee's lines (the "Initial Load"). After the Initial Load, Assignor shall grant Assignee per diem reclaim ("Per Diem Reclaim") for up to one hundred forty-four (144) hours per Boxcar per calendar month ("Month"), provided, however, that the total amount of Per

Diem Reclaim for the Month is not in excess of the total actual hours that the Boxcars, in the aggregate, were empty on Assignee's lines during such Month. Assignee shall provide to Assignor car location movement ("CLM") records on a daily basis.

Within thirty (30) days after each calendar month, Assignee shall provide Assignor with a summary ("Monthly Summary") which lists each Car reporting mark and number, the date such Car was first loaded with freight, if applicable, the date such Car was interchanged onto or off of Assignee's lines during such calendar 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).

If any Boxcar returns to Assignor's line as a result of Assignee (1) not filing the assignment pool code properly, or (2) not properly endorsing the waybill for such Boxcar, Assignee shall be responsible for all costs associated with returning such Boxcar to Assignee. Assignor shall use its best efforts to prevent any Boxcar from being interchanged onto its lines during the term of the Assignment Agreement, including advising their connecting carrier that the Boxcars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Boxcars to Assignor during the term of the Assignment Agreement.

If, at any time during the Initial Term or Extended Term, the Car Service Rules or Car Hire Rules of the Association of American Railroads are terminated or amended in any material respect, or if any change occurs in payment rates made by railroads generally for the use or handling of boxcars, the parties hereto shall negotiate a new assignment agreement which is mutually satisfactory to Assignor and Assignee. If the parties are unable to negotiate a new assignment agreement within forty-five (45) days, either party may terminate the Assignment Agreement upon not less than sixty (60) days' prior written notice to the other.

Upon expiration or termination of this Assignment Agreement, Assignee shall insure that the Boxcars are in interchange condition, normal wear and tear excepted, and shall remove the Boxcars from Car Service Directive 145. Thereafter, Assignee shall use its best efforts to provide final outbound loads for each Boxcar. At Assignor's option, Assignee shall grant up to one hundred twenty (120) days free storage for each such Boxcar or shall deliver, at Assignee's expense, each such Boxcar 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 Boxcars to the designated interchange point. For each Boxcar 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 Boxcar for which a final outbound load is not provided, Assignor shall grant per diem and mileage relief to Assignee until the hour during which such Boxcar is interchanged off Assignee's railroad lines.

Assignee recognizes that Assignor's rights and Assignee's rights are subject and subordinate to the rights of any lessor, owner or secured party with respect to the Boxcars, but Assignor hereby represents and covenants that it has full authority to make this Assignment Agreement.

Assignee and Assignor also agree that during the term of this Agreement, or any extended term, cars will be assigned to the Boise Cascade paper mill located at Boise Southern, Louisiana; and that such assigned cars may be routed outbound from Boise Southern, Louisiana, over the lines of the Kansas City Southern Railroad. Provided, however, that under no circumstances, shall such routings over the Kansas City Southern Railroad exceed twenty (20) cars in any given calendar month.

We trust this Assignment Agreement will assist you in meeting your equipment requirements in the coming months.

Please indicate your concurrence to the above terms and conditions by signing below and arrange to have the original returned to me.

Sincerely,

MINNESOTA, DAKOTA & WESTERN  
RAILWAY COMPANY

NAME: Robert W. Wallace

TITLE: Vice President

DATE: 9/11/86

CONCURRENCE BY THE ATCHISON, TOPEKA  
AND SANTA FE RAILWAY COMPANY

NAME: [Signature]

TITLE: General Supt. of Transportation

DATE: Sept. 24, 1986

**BOXCAR USE AGREEMENT**

**THIS BOXCAR USE AGREEMENT** (the "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 1990 between **MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY** ("Railroad") and **CANADIAN NATIONAL RAILWAYS** ("User").

**Railroad and User agree as follows:**

1. Subject to Subsection 5.A below, with respect to the 44 boxcars identified on the attached Exhibit A (the "Cars"), the term of the Agreement shall commence on July 1, 1990 and shall continue in effect for one year thereafter (the "Initial Term"). It shall then be automatically extended for two 12-month periods (each to be known as the "Extended Term"). Either party may cancel the Agreement effective as of the end of any Extended Term by providing not less than 90 days' prior written notice to the other party.
2.
  - A. Upon Railroad's instruction, and not without Railroad's instruction, User shall place the Cars into an assignment pool on User's 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.
  - B. User shall accept in interchange each Car that returns to Railroad's lines during the term of the Agreement, and neither party shall assess against the other any charges associated with the return of such Cars to User.
3. User shall, in connection with the Cars, comply with the handling carrier's obligations under Association of American Railroads Interchange Rules while any Car is in its possession.
4. User shall deliver each empty Car to the St. Lawrence & Atlantic Railroad Company.
5.
  - A. User and its Duluth, Winnipeg & Pacific Railway ("DWP") shall receive full car hire relief ("Relief") for any empty Car that was on User's lines or DWP's lines between March 1, 1990 and June 30, 1990.
  - B. Commencing July 1, 1990, User and DWP shall be entitled to Relief for each empty Car moved to St. Lawrence & Atlantic Railroad, such combined Relief not to exceed 144 hours per Car per calendar month for all the Cars in the aggregate.
  - C. User shall submit to Railroad a special Relief statement ("Relief Statement") for March, April, May and June 1990 for Relief claimed under this Agreement for such months. Thereafter, User shall submit to Railroad such Relief Statement at the end of each calendar month with respect to any Relief claimed during such month under the Agreement. Such Relief Statement shall include for each Car the applicable reporting marks, its

ICC-prescribed hourly car hire rate, and the time period such Car qualified for Relief on the lines of the DWP or User.

6. During the term of the Agreement, Railroad may, at its expense, replace any or all Cars with similar cars upon not less than ten (10) days' prior written notice to User.
7. Railroad is responsible for maintenance and repair expenses. User shall promptly notify Railroad of any damage to, defect in, need of repair to, or destruction of any Car, providing the time, place and nature of any accident or bad order condition. For any damaged Car that requires repairs other than running repairs, car hire (time and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall User place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of User without Railroad's prior approval. Any such repair must be performed under the direction and control of Railroad.
8.
  - A. Upon the expiration or termination of this Agreement with respect to any Car, User shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145. At no cost to Railroad, User shall return such Car to Railroad at the interchange point on User's lines designated by Railroad (the "Return Location").
  - B. Each Car shall be returned to Railroad (i) free of Rule 95 damage and (ii) suitable for loading.
  - C. Until any Car is returned to Railroad after the expiration of the Agreement, User shall pay the applicable car hire for such Car while it is on User's lines. Nothing in this Section shall give User the right to retain possession of any Car after expiration or other termination of this Agreement with respect to such Car.
9. Except as provided in this Agreement, without Railroad's consent User shall not enter into any agreement with any party that affects the revenues earned by any Cars.
10. This Agreement and User's rights are subject and subordinate to the rights and remedies of any lender, owner or other party which finances the Cars.
11. 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 Railroad:

If to User:

Director, Car Hire Accounting  
Minnesota, Dakota & Western  
Railway Company  
55 Francisco Street  
San Francisco, CA 94133

Assistant Chief  
Transportation/Car Management  
Canadian National Railways  
935 de la Gauchetiere St. West  
Montreal, Quebec H3B 2M9

- 12. This Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
- 13. This Agreement may be executed in three counterparts and such counterparts together shall constitute one and the same contract.

**MINNESOTA, DAKOTA & WESTERN  
RAILWAY COMPANY**

**CANADIAN NATIONAL RAILWAYS**

By: *RW Wallis*

By: *R F Duggan*

Title: *Vice President*

Title: Asst. Chief of Transportation  
- Car Management

Date: *8-6-90*

Date: July 17, 1990

**ACKNOWLEDGEMENT AND CONSENT:**

**ITEL RAIL CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

Exhibit A to the Boxcar Use Agreement dated as of \_\_\_\_\_ by and between  
**MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY** ("Railroad") and  
**CANADIAN NATIONAL RAILWAYS** ("User").

The following 44 XP Boxcars are subject to the Agreement:

MDW 10005	MDW 10215	MDW 10240	MDW 10274
MDW 10044	MDW 10217	MDW 10241	MDW 10280
MDW 10077	MDW 10218	MDW 10247	MDW 10286
MDW 10148	MDW 10222	MDW 10249	MDW 10290
MDW 10172	MDW 10224	MDW 10252	MDW 10291
MDW 10202	MDW 10226	MDW 10253	MDW 10294
MDW 10203	MDW 10228	MDW 10254	MDW 10295
MDW 10204	MDW 10232	MDW 10257	MDW 10326
MDW 10206	MDW 10234	MDW 10262	MDW 10344
MDW 10209	MDW 10238	MDW 10267	MDW 10394
MDW 10211	MDW 10239	MDW 10273	MDW 10408

**MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY**  
Authorized Representative

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_