

ITEL

May 23, 1991

IteI Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. 15642-HH FILED 1991

MAY 24 1991 - 10 10 AM

1-144A004 INTERSTATE COMMERCE COMMISSION

Re: Schedule No. 32

Dear Mr. Strickland:

On behalf of IteI Rail Corporation, the above instruments in three (3) counterparts each are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Schedule under the Lease Agreement dated May 5, 1988, between IteI Rail Corporation and Hartford and Slocomb Railroad Company, which was recorded with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Hartford and Slocomb Railroad Company (Lessee)
2506 South Park
Dothan, Alabama 36301

Schedule No. 32 adds to the Lease Agreement one hundred fifty (150) 4750 cubic foot, 100-ton covered hopper cars bearing reporting marks HS 1833-1982.

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

MAY 24 10 03 AM '91
MOTOR OPERATING UNIT

MAY 24 1991 -10 ²⁴ AM

INTERSTATE COMMERCE COMMISSION

SCHEDULE NO. 32

THIS SCHEDULE No. 32 ("Schedule") to that certain Lease Agreement made as of May 5, 1988, as amended (the "Agreement"), between ITEL RAIL CORPORATION, as lessor ("Lessor"), and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made as of April 30, 1991 between 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. 32, 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	Reporting Marks and Numbers	Capacity	No. of Cars
LO	100 Ton, Covered Hopper Cars	HS 1833-1982	4750 c.f.	150

3. A. The term of the Agreement for each Car shall commence on the date such Car is marked with Lessee's reporting marks ("Delivery Date") and shall expire for all Cars on the date which is 2 years ("Initial Term") from the earlier of (i) the date on which the last Car described on this Schedule is marked with Lessee's reporting marks or (ii) 120 days from the date on which the first of the Cars described in this Schedule is physically interchanged onto the railroad lines of the Huron and Eastern Railway Company, Inc. ("Assignee"). After the Delivery Date of the final Car, Lessor shall provide Lessee a certificate (the "Certificate") setting forth the Delivery Date and Expiration Date for each Car. Each date on the Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed 24 calendar months (each such calendar month an "Extended Term"). Provided, that the Cars are not subject to the Assignment Agreement dated May 1, 1991 ("Huron and Eastern Assignment Agreement") between Lessee and Huron and Eastern Railway Company, Inc., a copy of which is attached as Exhibit A, Lessor may terminate the Agreement at any time during

the Initial Term or any Extended Term as to some or all of the Cars described in this Schedule by providing not less than 10 days prior written notice to Lessee.

4. A. Lessor agrees to pay to Lessee an annual rental fee of ("Rental Fee") for the use of Lessee's reporting marks and numbers on the Cars described in the Huron and Eastern Assignment Agreement. Lessor shall pay the initial Rental Fee to Lessee within 120 days from the first day of the month following the month in which the Initial Term commences, and shall thereafter pay the Rental Fee to Lessee annually throughout the duration of the term of the Huron and Eastern Assignment Agreement.
 - B. If any Car(s) returns to Lessee's lines prior to the expiration or termination of the Huron and Eastern Assignment Agreement, Lessor shall be responsible for all costs associated with such Car(s) being entered into and removed from a storage facility ("Storage") by Lessee, including but not limited to a switching fee of per car per occurrence and a storage charge of per car per day, and for all costs associated with returning such Car(s) to the Assignee's lines. Lessee shall notify Lessor upon the placement of any Car(s) into Storage. Lessee shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Huron and Eastern Assignment Agreement, including advising Lessee'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 Lessee during the term of the Huron and Eastern Assignment Agreement.
5. Lessor consents to Lessee's entering into the Huron and Eastern Assignment Agreement; provided, that Lessor shall perform Lessee's duties under the Huron and Eastern Assignment Agreement, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Huron and Eastern Assignment Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Huron and Eastern Assignment Agreement to any party designated by Lessor.
 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 those delegated to Lessee in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
 7. Lessor agrees to reimburse Lessee, within 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: a) ad valorem tax assessments on the Cars; and b) 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. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, 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 prescribed by the ICC in any applicable time period for each Car.

(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, hours 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.

B. Lessor shall receive _____ earned by each Car prior to and during the term of the Huron and Eastern Assignment Agreement.

C. Upon the expiration or early termination of the Huron and Eastern Assignment Agreement, Lessor shall receive _____ earned by each Car while such Car is off the Eligible Lines.

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 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 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. Except as provided in this Schedule, 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.

9. 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.

10. 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.

Each party, pursuant to due corporate authority, has caused this Schedule 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

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: *William A. Smith*
Title: V.P. SALES
Date: 4/30/91

By: *C. J. Jordan III*
Title: Pres.
Date: 5/1/91

EXHIBIT A

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is made and entered into as of _____, 1991 between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and HURON AND EASTERN RAILWAY COMPANY, INC. ("Assignee").

Assignor and Assignee agree as follows:

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

AAR Mech Desig.	Description	Reporting Marks and Numbers	Capacity	No. of Cars
LO	100 Ton, Covered Hoppers	HS 1833-1982	4750 c.f.	150

2. Assignor 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 435 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. Assignor shall, at Assignee's expense, deliver 150 cars ("Delivered Car(s)") to an interchange point located on the railroad lines of Assignee and Assignee shall, at its expense, remark each Delivered Car to bear the reporting marks and numbers provided in Section 1 above.
4. This Assignment Agreement shall become effective, with respect to each Car on the date such Car is marked to the reporting marks and numbers designated by Assignor ("Delivery Date") and shall expire for all Cars on the date which is 2 years from the earlier of (a) the date on which the last Car described in this Assignment Agreement is marked with Assignor's reporting marks or (b) 120 days from the date on which the first of the Cars described in this Assignment Agreement is physically interchanged onto Assignee's lines. After the Delivery Date of the final Car on this Assignment Agreement, Assignor shall provide Assignee a certificate (the "Certificate") setting forth the Delivery Date and Expiration Date for each Car. Each date on each Certificate shall be deemed accurate, final and binding unless Assignee disputes such date in writing within 14 calendar days of receipt by Assignee of such Certificate.
5. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
6. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this

11. Assignee agrees to pay rent to Assignor for the Cars, and such rent shall be by Assignor.
12. Upon any abatement, reduction or offset, as set forth in Subsection 8.A. (iii), User shall, within 10 days of Railroad's request, reimburse Railroad for such amount.
13. If, for any calendar quarter, Revenues received by Assignor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than an amount equal to the amount the Cars would have earned had they been on railroad lines other than Eligible lines for days during such quarter, with each Car traveling miles per day and with each Car earning Revenues at the Revenue Rates ("Minimum Rent"), then Assignor may so notify Assignee. Within ten (10) days of receipt of such notice from Assignor, Assignee may either:
 - A. Notify Assignor of intent to pay Assignor the shortfall between the Minimum Rent and the Revenues received by Assignor for the Cars in such calendar quarter and agree to pay the shortfall, if any, between the Minimum Rent and the Revenues received by Assignor for the Cars in each subsequent calendar quarter for the duration of the Term. Assignee shall pay Assignor such shortfall not later than 60 days after receiving an invoice.
 - B. Elect in writing not to pay Assignor such shortfall for such quarter. In such event, Assignor may terminate the Assignment Agreement with respect to all or any of the Cars upon not less than 10 days written notice to Assignee at any time during the Assignment Agreement.
14. 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.
15. A. Assignor shall at its expense, except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense, perform in a timely manner all repairs, maintenance, replacement of parts and mandated modifications as are needed to keep any Car in good working order and repair, suitable for loading and interchange and in accordance with the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules (collectively "Interchange Rules"), the Federal Railroad Administration ("FRA") rules and the rules of any other applicable regulatory body ("Maintenance"). However, such Maintenance shall be at Assignee's expense if it was occasioned by (i) damage (which shall not include ordinary wear) while in Assignee's possession, custody or control, (ii) damage occurring from use other than permitted under this Assignment Agreement, or (iii) damage for which Assignee would have been responsible under the Interchange Rules had the Car been a foreign car (including damage not noted at time of interchange to Assignee). Assignee shall promptly notify Assignor of any Maintenance required, providing the time, place and nature of any accident or bad order condition.

- B. To facilitate continued immediate use of any Car, Assignee may make running repairs (utilizing Assignee's own employees, but not any private repair facility or any private contractor on Assignee's property) to those parts of any Car specified in Exhibit A, but Assignee shall not perform or cause to be performed any other Maintenance on any Car without Assignor's prior written consent. Assignee shall submit a monthly invoice in AAR format for running repairs performed on any Car by Assignee or by another railroad which has billed and received payment therefor from Assignee.
16. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignor shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 435, and at Assignor's option, Assignee shall, at its expense, deliver the Cars to a point on the Eligible Lines to be designated by Assignor or shall use its best efforts to provide final outbound loads for the Cars.
17. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars.
18. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:
- | | |
|---|---|
| <p>If to Assignor:</p> <p>Hartford & Slocumb Railroad
Company
550 California Street
San Francisco, CA 94104
Attention: Manager, Car Hire
Accounting</p> | <p>If to Assignee:</p> <p>Huron and Eastern Railway Company,
Inc.
538 East Huron Street
Vassar, Michigan 48768
Attention: President</p> |
|---|---|
19. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

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

HARTFORD AND SLOCOMB RAILROAD COMPANY

HURON AND EASTERN RAILWAY COMPANY,
INC.

By: _____

By: Jamy M. McCloud

Title: _____

Title: Vice President & Gen. Mgr.

Date: _____

Date: 4/11/91

EXHIBIT A

RUNNING REPAIRS

COVERED HOPPERS

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	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement of Hatch Cover)
Brake Beams and Levers	
Truck Springs	

EXHIBIT B

RUNNING REPAIRS

COVERED HOPPERS

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)	