

JOHN D. HEFFNER, PLLC

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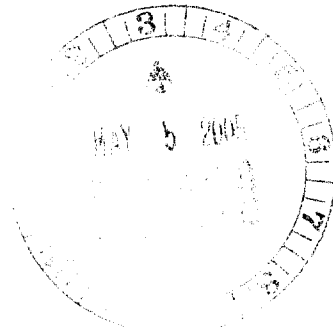
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BY HAND

May 5, 2005

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

ORIGINAL

213934

RE: STB Docket No. EX PARTE NO. 230, Sub-No. 9
IMPROVEMENT OF TOFC/COFC REGULATION,
WTL Rail Corporation
Petition for Partial Revocation of Exemption

FILED

MAY - 6 2005

STB Docket No. 42092, WTL Rail Corporation
Petition for Declaratory Relief

TRANSPORTATION BOARD

213935

Dear Mr. Williams:

On behalf of Petitioner WTL Rail Corporation, I am filing an original and ten copies of:

- (1) in STB Docket No. 230, Improvement of TOFC/COFC Regulation, Sub-no. 9, a Petition for Partial Revocation of Exemption and
- (2) in STB Docket No. 42092, a Petition for Declaratory And Interim Relief

I am also enclosing one check payable to the Board for \$1,600 to cover the applicable filing fees and a computer disk formatted in WordPerfect 8.0 containing these filings.

Please date stamp and return one copy of this filing.

Sincerely yours,

John D. Heffner

cc: Mr. Richard Lombardo
All parties

FILED

MAY - 5 2005

TRANSPORTATION BOARD

ENTERED
Office of Proceedings
2005

Part of
Public Record

JOHN D. HEFFNER, PLLC

1920 N St., N.W.

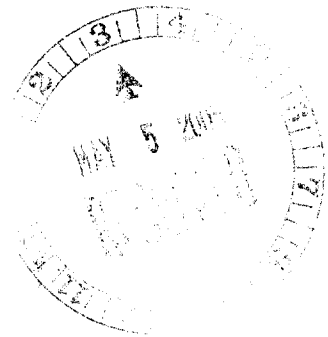
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BY HAND

May 5, 2005

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

TRANSPORTATION BOARD

RE: STB Docket No. EX PARTE NO. 230, Sub-No. 9
IMPROVEMENT OF TOFC/COFC REGULATION,
WTL Rail Corporation
Petition for Partial Revocation of Exemption

STB Docket No. 42092, WTL Rail Corporation
Petition for Declaratory and Interim Relief

ORIGINAL

FILED

MAY - 5 2005

Dear Mr. Williams:

I am writing in connection with the above-captioned filing submitted to the Board today by WTL Rail Corporation.

TRANSPORTATION BOARD

As far as Petitioner seeks emergency relief to stay certain actions of the Burlington Northern And Santa Fe Railway and four other Class I railroads, I want to bring to the Office of Proceedings' attention a very pertinent May 3 ruling by the U.S. Court of Appeals for the District of Columbia, CSX Transportation, Inc. v. Anthony A. Williams, et al. (No. 05-5131). After stating the four grounds to be considered in connection with the grant of injunctive relief, the Court said:

If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak. [citations omitted]. We have often recognized that injunctive relief may be justified, for example, 'where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury.' [citation omitted].

Here we believe there is a strong likelihood of success on the merits once the Board chooses to hold a proceeding. Moreover, Petitioner and its supporting shippers have made out a clear case of injury for which it would be difficult, if not

impossible, to determine any monetary damages. A copy of the pertinent pages of the Court's ruling (pages 1 and 5) is attached to this letter.

In addition, I am enclosing a one page letter of support received this morning from the National Onion Association.

Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner

Enclosures

cc: David Konschnik, Esq. (by fax)
Mr. Richard Lombardo
All parties

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued April 27, 2005

Decided May 3, 2005

No. 05-5131

CSX TRANSPORTATION, INC.,
APPELLANT

v.

ANTHONY A. WILLIAMS, IN HIS OFFICIAL CAPACITY AS
MAYOR OF THE DISTRICT OF COLUMBIA, ET AL.,
APPELLEES

On Emergency Motion for Injunction Pending Appeal and
for Motion for Summary Reversal

Carter G. Phillips argued the cause for the appellant. With him on the motion for injunction and summary reversal were *Virginia A. Seitz*, *Irvin B. Nathan*, *Mary Gabrielle Sprague*, *Sidney A. Rosenzweig*, *Kathryn E. Taylor*, *Peter J. Shudtz* and *Paul R. Hitchcock*.

Douglas N. Letter, Litigation Counsel, United States Department of Justice, argued the cause for *amicus curiae* United States of America in support of the appellant. With him on the response were *Kenneth L. Wainstein*, United States Attorney, *Gregory G. Katsas*, Deputy Assistant Attorney General, *Irene M. Solet*, Attorney, and *Jeffrey A. Rosen*, General Counsel, United States Department of Transportation, and *Paul Geier*, Assistant General Counsel.

district court denied preliminary injunctive relief, CSXT filed an emergency motion in this court, seeking reversal of the district court's order.⁴ This court held a hearing on the emergency motion on April 27, 2005.

II.

In considering whether to grant preliminary injunctive relief, the court must consider whether: (1) the party seeking the injunction has a substantial likelihood of success on the merits; (2) the party seeking the injunction will be irreparably injured if relief is withheld; (3) an injunction will not substantially harm other parties; and (4) an injunction would further the public interest. *See Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). The test is a flexible one. "If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak." *Cityfed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). We have often recognized that injunctive relief may be justified, for example, "where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury." *Id.* We review the district court's weighing of the four factors under the abuse of discretion standard and its findings of fact under the clearly erroneous standard. *Serono*, 158 F.3d at 1318 (internal citations omitted). To the extent the district court's decision turns on questions of law, however, our review is *de novo*. *Id.* at 1318 (citations omitted).

CSXT and the United States contend that CSXT has a substantial likelihood of success on the merits of the argument

⁴We do not address the other relief requested by CSXT in its emergency motion.

MAY- 4-05 WED 3:40 PM N. O. A.

FAX NO. 970 353 5897

P. 1



NATIONAL ONION ASSOCIATION

822 7th Street / Suite 510 / Greeley, Colorado 80631 / Tel 970.353.5895 / Fax 970.353.5897
info@onions-usa.org / www.onions-usa.org

May 4, 2005

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

To Whom It May Concern:

The National Onion Association (NOA) is the non profit trade association representing the United States bulb onion industry. The Association is comprised of nearly 600 members from throughout the entire country and encompasses growers, shippers, handlers, and suppliers within the onion industry. Onion is a very important crop within the general produce sector and enjoys the third largest consumption among all fresh vegetables. NOA seeks to preserve and improve the business environment of all participants in the industry and to educate consumers regarding the outstanding nutritional and healthful attributes of onion.

It is very troubling to learn of railroad intentions to curtail and even cancel conveyance via van trailers. Onions are a perishable commodity and require fast, timely, and appropriate transportation. In the interest of profits, it appears the railroad is abandoning tried and proven trailer conveyance by moving to containers only. This service not only takes longer, which is a significant issue, but also does not allow for the proper ventilation of the perishable product.

We believe that the railroads have a common carrier responsibility to provide a broad spectrum of railroad services in the public interest. We support a petition by WTL Rail Corporation seeking to have the Surface Transportation Board initiate a proceeding in this matter. The unreasonable conveyance practices described above should cease and actions founded in common sense should prevail. Reduction and elimination of railroad trailer fleets will have dire consequences for all onion shippers and handlers who will lose a valuable transportation alternative and leave them at the mercy of a declining fleet of highway carriers.

Sincerely,

A handwritten signature in cursive script that reads "Wayne Mininger".

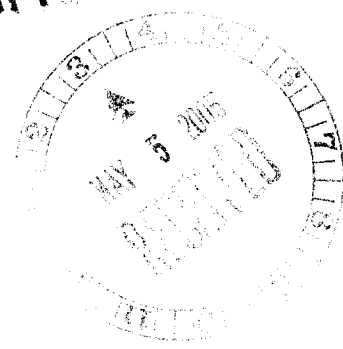
Wayne Mininger
Executive Vice President

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

EX PARTE NO. 230
Sub-No. 9



IMPROVEMENT OF TOFC/COFC REGULATION

WTL RAIL CORPORATION PETITION FOR
PARTIAL REVOCATION OF EXEMPTION

ORIGINAL

ENTERED
Office of Proceedings

MAY - 5 2005

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Public Record

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TRANSPORTATION BOARD

FILED

MAY - 5 2005

SURFACE
TRANSPORTATION BOARD

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
202-263-4180

Counsel for WTL Rail Corporation

Dated: May 4, 2005

EXPEDITED ACTION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 230
Sub-No. 9

IMPROVEMENT OF TOFC/COFC REGULATION

WTL RAIL CORPORATION PETITION FOR
PARTIAL REVOCATION OF EXEMPTION

INTRODUCTION

Pursuant to 49 U.S.C. 10502(d) and 49 CFR 1121.1, et seq., Petitioner, WTL Rail Corporation (hereafter "Petitioner" or "WTL"), petitions for partial revocation of the exemption from the provisions of Subtitle IV of Title 49 of the U.S. Code, originally granted in Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulation, 364 I.C.C. 731 (1981) (hereafter cited as TOFC).

STATEMENT OF FACTS

WTL is a small, closely-held Delaware corporation with offices in the Chicago suburb of Palos Heights, IL. It is in the business of renting truck trailers to railroads for the rendition of trailer-on-flat-car ("TOFC") service. WTL owns or leases a fleet of over 1,500 TOFC trailers which it makes available to railroads for use in common carrier service under a type of agreement known as a "Trailer Use Agreement." WTL has a Trailer Use Agreement with each of the seven class I railroads serving the country. To the extent that WTL's Trailer Use Agreement does not address specific operating issues with WTL's contracting

railroads, the Agreement incorporates provisions from the Code of Trailer and Container Service and Reporting Rules and the Intermodal Interchange Rules of the Association of American Railroads ("AAR").¹ Lombardo Verified Statement at 1-2, attached to the Petition for Declaratory and Interim Relief. WTL is the same party which filed a Petition for Partial Revocation and a Petition for Declaratory Relief against CSX Transportation, Inc. ("CSX"), on December 14, 2004.² The earlier proceedings are presently the subject of ongoing settlement discussions with CSX and are not related to this proceeding. This proceeding does not at present involve the facts and circumstances of the CSX proceeding. WTL does not anticipate that CSX will become a party to this proceeding.

Contemporaneously with the filing of this Petition for Partial Revocation, Petitioner is filing a Petition seeking declaratory and interim relief, as well as a request for the entry of a "housekeeping" stay (hereafter cited as "WTL's Declaratory Request"). Specifically, WTL's Declaratory Request alleges that WTL has had a long standing commercial relationship with the seven class I railroads³ whereby WTL provides trailers

¹ Hereafter cited as the AAR Rules.

² The Board docketed those proceedings as Ex Parte No. 230, (Sub-No. 8) and Finance Docket No. 42090, respectively.

³ WTL has agreements with CSX Transportation, Norfolk Southern Corporation ("NS"), Union Pacific Railroad Company ("UP"), Burlington Northern And Sante Fe Railway Company ("BNSF"), Canadian National Railway (CN), Canadian Pacific Railway ("CP"), and Kansas City Southern Railway ("KCS").

for their use pursuant to a Trailer Use Agreement;⁴ that the Trailer Use Agreement and the AAR Rules spell out the responsibilities of the parties; that five of these seven railroads (NS, UP, BNSF, CP, and KCS) have notified⁵ WTL and other parties of their intention to terminate those agreements on 30 days' notice with the result that WTL's equipment will be handled as "private" trailers instead of as "rail controlled" trailers; that the railroad's termination of these agreements and refusal to utilize trailers owned or controlled by WTL or other providers as part of their trailer fleet undermines the railroads' obligation to furnish shippers with safe and adequate car service as required by 49 U.S.C. 11121(a)(1). This case illustrates not only the continuing erosion of the common carrier obligation of the railroads but the need for the Board to reassert its regulatory jurisdiction where market forces are insufficient to protect customers against the abusive practices of large railroad oligopolies. The accompanying WTL Declaratory Request and verified statements discuss in more detail the nature of this dispute.

WTL seeks a declaratory ruling that the Railroads' proposed termination of the Trailer Use Agreements and refusal to handle

⁴ Copies of the current Trailer Use Agreements are attached hereto as Exhibits A-E.

⁵ Copies of emails, letters, or press releases from these railroads advising WTL and other parties that their Trailer Use Agreements will be terminated and the railroads will refuse to handle their equipment except as "private" trailers are attached as Exhibits F-J.

as "rail controlled" trailers in common carrier service constitutes a violation of the car service provisions of 49 U.S.C. 11121(a)(1) as well as an unreasonable practice under 10702(2) and 10704(a)(1). WTL asks the Board to (1) continue requiring the Railroads to continue handling WTL's trailers as "rail controlled" trailers in keeping with their common carrier obligation to furnish safe and adequate car service under 49 USC 11121(a)(1), (2) begin a proceeding and conduct such hearings as it deems necessary to grant relief, (3) grant a "housekeeping" stay during the pendency of those proceedings requiring the Railroads to cease and desist from violating their statutory obligations to furnish trailers, (4) enjoin permanently such violations, and (5) grant such additional relief as may be just and necessary.

DISCUSSION

49 U.S.C. 10502(d) gives the Board the power to revoke an exemption when it finds that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. Revocation is necessary here for the Board to consider WTL's Declaratory Request. See, e.g., Buffalo Crushed Stone, Inc. v. R.J. Corman Railroad Company/Allentown Lines, Inc. (STB Docket No. 42028, served October 7, 1998); Consolidated Rail Corporation-Declaratory Order-Exemption, 1 I.C.C.2d 895 (1986) (holding that the agency must first revoke an exemption before it will consider a complaint for substantive relief). Recent Board precedent

strongly suggests that WTL need not file this petition for partial revocation of the TOFC/COFC exemption in order to prosecute its Declaratory Request. See, Granite State Concrete Co., Inc., et al v. Boston And Maine Corporation (STB Docket No. 42083, slip op. at 7-8, served September 15, 2003) (where the Board partially revoked a commodity exemption on its own motion in order to consider complainants' request that the defendant railroad breached its duty to provide common carrier rail service or committed unreasonable practices). Nevertheless, WTL is filing this petition for partial revocation out of an abundance of caution.

Moreover, the Board's retention of regulatory jurisdiction over TOFC denies WTL the ability to seek redress for its claims in a court of law. Quaser Co. v. Atchison, Topeka And Santa Fe Ry. Co., 632 F. Supp. 1106, 1111 (N.D. Ill. 1986) (hereafter cited as Quaser)⁶; cf., DeBruce Grain, Inc. v. Union Pacific Railroad Co., 983 F. Supp. 1280 (W.D. Mo. 1997).⁷ Indeed, there is no question that the Board has jurisdiction over trailers generally and WTL's trailers in particular. "Trailers" are within the ambit of property identified in the I.C.C. Termination Act

⁶ Suit brought by electronics manufacturer against railroad for loss of cargo handled in TOFC service.

⁷ That Court dismissed plaintiff's court suit holding that the Board has exclusive jurisdiction to consider plaintiff's claims that defendant railroad failed to satisfy its obligations under 49 U.S.C. 11101(a) and 11121(a) (1).

("ICCTA") constituting a "railroad."⁸ Trailers fall within the universe of equipment that can be the subject of an equipment recordation at the Board. See, 49 U.S.C. 11301.⁹ WTL is a subscriber to the AAR's Code of Trailer and Container Service and Reporting Rules and the Intermodal Interchange Rules. Its equipment is listed in the Official Intermodal Equipment Register and the AAR's UMLER file.¹⁰ Section 11121(a)(1) requires railroads to furnish safe and adequate car service. Companion section 11122 of the ICCTA refers to "compensation to be paid for the use of a locomotive, freight car, or other vehicle [emphasis supplied] and the ICCTA's definitions indicate that "car service" includes "other vehicles and special types of equipment used in the transportation of property by a rail carrier." 49 U.S.C. 10101(2). For the Board to retain jurisdiction over TOFC traffic and refuse to revoke that exemption to allow WTL's Declaratory Request to be heard would be tantamount to ruling that the Railroad's egregious conduct is subject to no law at all. Cf., Quaser. at 1111-2.

⁸ "Railroad" includes "a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad." 49 U.S.C. 10102(6)(A).

⁹ 49 U.S.C. 11301 refers to recordation of various types of leases and encumbrances on "vessels, railroad cars, locomotives, or other rolling stock or accessories used on such vessels, railroad cars, locomotives, or other rolling stockintended for a use related to interstate commerce."

¹⁰ The Universal Machine Language Equipment Register maintained by the AAR.

Regulation is necessary here to carry out the following specific national transportation policy goals of 49 U.S.C. 10101:

1. To allow, to the maximum extent possible, competition and the demand for rail services, to establish reasonable rates for transportation by rail, 49 U.S.C. 10101(1);
2. To promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues as determined by the Board, 49 U.S.C. 10101(3);
3. To ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and national defense, 49 U.S.C. 10101(4);
4. To foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes, 49 U.S.C. 10101(5);
5. To operate transportation facilities and equipment without detriment to the public health and safety, 49 U.S.C. 10101(8); and
6. To prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination, 49 U.S.C. 10101(12).

Partial revocation of the TOFC exemption here would satisfy the national transportation policy goals set forth in 49 U.S.C. 10101(1), (4), (5), and (8) by preserving an additional source of "rail controlled" trailers for smaller intermodal customers, thereby increasing the competitive alternatives available to them. Maintenance of a national trailer pool available to meet the competitive needs of smaller shippers is an essential element of the national transportation policy. Finally, Board regulation would advance the goal of 49 U.S.C. 10101(12) insofar as it would prohibit the Railroad's from using their market power to force "rail controlled" trailers such as that of WTL off the rails. The railroad's abrupt termination of its Trailer Use Agreement with WTL - aimed at eliminating one of the few remaining providers of rail controlled trailers -- cries out for STB regulation to stop past and prevent future abuses.

Moreover, the actions by the Railroads in unilaterally withdrawing from the business of handling "rail controlled" trailers undermines the predicates upon which the ICC originally granted the TOFC/COFC exemption in 1982, namely limited impact and no opportunity for abuse of captive shippers. As WTL's Richard Lombardo explains in his verified statement appended to the Declaratory Petition, the Railroad's actions will have a major national impact. Mr. Lombardo predicts that approximately 30,000 of the 60,000 "rail controlled" trailers presently in use will be withdrawn from service and that trailer-dependent

shippers will hoard the remaining units during the peak pre-Christmas shipping season. Lombardo VS at 8-9. Furthermore, as noted by Mr. Lombardo and supporting shippers,¹¹ the elimination of "rail controlled" trailers will force shippers to find more expensive but unsatisfactory alternatives. Id. at 8.

The dispute before the Board is not a contract claim. It involves the Railroads' ability to exclude WTL and a few other providers of "rail controlled" equipment from participation in the national transportation system and to deny small intermodal customers the equipment WTL furnishes. WTL asks the Board to find that the Railroads' practice -- of terminating the Use Agreements and refusing to handle WTL's "rail controlled" equipment except as private equipment -- are violations of their obligation to furnish a safe and adequate supply of equipment under 49 U.S.C. 11121(a)(1) as well as an unreasonable practice under 49 U.S.C. 10702(2) and 10704(a)(1). WTL asks the Board to order the Railroads to stop these practices.

In adopting the TOFC/COFC exemption, the former Interstate Commerce Commission noted that it would "stand ready to monitor the effects of the exemption to assure that continued regulation is not needed. We believe that such after-the-fact evaluation is what Congress intended." TOFC, supra, 364 I.C.C. at 733; cf. Class Exemption-Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1

¹¹ Statements of San Andreas Fast Forwarding, Inc., and Alliance Shippers, Inc., attached to Mr Lombardo's statement.

I.C.C. 810-11 (1985). While the ICC believed at the time that there was overwhelming support for the TOFC exemption, it was sufficiently wise to note, in its words, "the limitations on our predictive powers." TOFC at 733. Although WTL believes that the TOFC exemption has been very beneficial overall, it also notes that there have occasional abuses which the Board has the power and the responsibility to remedy. These recent developments represent just the sort of situation where the Board should act.

WTL has carefully researched pertinent precedents to find a case in which the ICC or the Board has even considered a similar situation involving intermodal transportation. There is but one precedent, American Rail Heritage, Ltd. D/B/A Crab Orchard & Egyptian Railroad, et al (No. 40774, slip op. served June 16, 1995).¹² While the Commission's majority -- over the strong dissent of Commissioner McDonald -- held that the Complainant failed to meet the standards for revocation of an exemption, the majority admonished the Class I railroads not to interpret this decision as a license to begin making imprudent unilateral decisions regarding the interchange of equipment with Class III carriers. The Commission observed that it has an affirmative duty to help to keep the playing field level between Class I and Class

¹² That case involved CSX's cancellation of its Trailer Interchange Agreement (essentially a trailer use agreement) with the complaining railroads and refusal to either accept loaded TOFC trailers and/or pay compensation for their use. After complainants initially challenged CSX's practices under 49 U.S.C. 10101a(13), 11101, 11121, 11122, 10703, 10741, and 10742, alleging undue concentration of market power, they amended their complaint adding a request to revoke the TOFC exemption in order to grant relief.

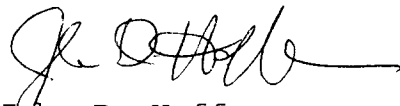
III carriers, and that it will take action, when appropriate, to fulfill that obligation. Indeed, it may be that someone, in the future, will demonstrate, that the TOFC/COFC exemption should be revoked altogether, in part, so that their suppliers and users can require the interchange of intermodal equipment.

WTL believes that this matter presents such a case for STB action. The Board should partially revoke the TOFC/COFC exemption to allow this dispute to be heard on its merits.

CONCLUSION

Wherefore, WTL requests that the Board grant its request for partial revocation of the TOFC exemption in order to consider and grant its Declaratory Request.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
202-263-4180

Counsel for WTL Rail Corporation

May 4, 2005

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Petition for Partial Revocation of Exemption and Petition for Declaratory and Interim Relief of WTL Rail Corporation was served on May 5, 2005 to the following by first-class mail:

Edward Zajac
Burlington Northern & Santa Fe Railway Co.
P.O. Box 961056
Fort Worth, TX 76161-0056

Norfolk Southern Railway
3 Commercial Place
Norfolk, VA 23510

John P. Smith
Union Pacific Railroad
1400 Douglas Street
STOP 1160
Omaha, NE 68179-1160

Mike Leveille
Canadian Pacific Railway
1290 Central Parkway W, Suite 600
Mississauga, ON
L5C 4R3

Adam Rodrey
Kansas City Railway
427 West 12th Street
Kansas City, Missouri 6405


John D. Heffner

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

STB Docket NO. 42092

ORIGINAL

WTL RAIL CORPORATION

ENTERED
Office of Proceedings

May 4, 2005
Bart of
Public Record

PETITION FOR DECLARATORY AND INTERIM RELIEF

FILED

MAY 4 2005

TRANSPORTATION BOARD

ORIGINAL

FILED

MAY 4 2005

John D. Heffner
John D. Heffner, PLLC
1920 N Street, NW
Suite 800
Washington, DC 20036
202-263-4180

TRANSPORTATION BOARD

Counsel for WTL Rail Corporation

Dated: May 4, 2005

EXPEDITED RELIEF REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket NO. 42092

WTL RAIL CORPORATION

PETITION FOR
DECLARATORY AND INTERIM RELIEF

INTRODUCTION

Pursuant to 5 U.S.C. 554(e), 49 U.S.C. 721(b)(1), and 49 U.S.C. 721(b)(4), Petitioner WTL Rail Corporation (hereafter "WTL"), seeks (1) an order initiating a proceeding under 49 U.S.C. 11121(a)(1) with the Board to hold a hearing; (2) a declaratory ruling that certain practices of five Class I railroads (hereafter identified as "the Railroads")¹ violate 49 U.S.C. 11121(a)(1) and are unreasonable practices under 49 U.S.C. 10702(2) and 10704(a)(1); (3) a "housekeeping" stay during the pendency of these proceedings requiring the Railroads to maintain their presently effective relationships with WTL; (4) an order permanently enjoining the Railroads from violating these provisions; and (5) an order granting such other relief as may be just and reasonable.

Contemporaneously with the filing of this Petition, WTL also petitions for partial revocation of the exemption from regulation

¹ Norfolk Southern Corporation ("NS"), Union Pacific Railroad Company ("UP"), Burlington Northern And Santa Fe Railway Company ("BNSF"), Canadian Pacific Railway ("CP"), and Kansas City Southern Railway ("KCS").

from the provisions of Subtitle IV of Title 49 of the U.S. Code, originally granted in Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulation, 364 I.C.C. 731 (1981) (hereafter cited as TOFC). In support of this Petition, WTL submits the verified statements of its President, Richard Lombardo, and its expert witness, John Robinson.

STATEMENT OF FACTS

WTL is a small, closely-held Delaware corporation with offices in the Chicago suburb of Palos Heights, IL. It is in the business of renting truck trailers to railroads to facilitate the movement of truck-oriented freight by rail, a type of intermodal transportation known as trailer-on-flat-car ("TOFC") service. WTL presently owns or leases a fleet of over 1,500 48' TOFC trailers² which it furnishes to railroads for use in common carrier service under a type of agreement known as a "Trailer Use Agreement." WTL has a Trailer Use Agreement with each of the major railroads serving the country. To the extent that WTL's Trailer Use Agreement does not address specific operating issues with WTL's contracting railroads, it incorporates provisions from the Code of Trailer and Container Service and Reporting Rules and the Intermodal Interchange Rules of the Association of American

² The AAR Rules provide for two types of railroad trailers, "rail controlled trailers" such as those operated by WTL and "private trailers" such as those operated by motor carriers and express companies. Lombardo V.S. at 2-3.

Railroads ("AAR").³ Lombardo V.S. at 1-2. WTL is the same party that filed a Petition for Partial Revocation and a Petition for Declaratory Relief against CSX Transportation, Inc. ("CSX"), on December 14, 2004.⁴ These proceedings are the subject of ongoing settlement discussions with CSX and are not related to this proceeding. This proceeding does not involve the facts and circumstances of the CSX proceeding. WTL does not anticipate that CSX will become a party to this proceeding.

In his verified statement, Mr. Lombardo describes the long standing relationship that WTL has had with each of the seven Class I railroads⁵ whereby WTL provides trailers for their use pursuant to a Trailer Use Agreement;⁶ that the Trailer Use Agreement and the AAR Rules spell out the responsibilities of the parties; that the Railroads have notified⁷ WTL and other parties of their intention to terminate those agreements on 30 days' notice with the result that WTL's equipment will be handled as "private" trailers instead of as "rail controlled" trailers; and that the Railroads' termination of these agreements and refusal

³ Collectively called "the AAR Rules."

⁴ The Board docketed those proceedings as Ex Parte No. 230, Sub-No. 8 and Finance Docket No. 42090, respectively.

⁵ WTL has agreements with CSX Transportation and Canadian National Railway (CN") as well as the Railroads identified here.

⁶ Copies of the current Trailer Use Agreements are attached hereto as Exhibits A-E.

⁷ Copies of emails, letters, or press releases from the Railroads are attached as Exhibits F-J.

to utilize trailers owned or controlled by WTL or other providers as part of their common carrier trailer fleet undermines their obligation to furnish shippers with safe and adequate car service under 49 U.S.C. 11121(a)(1). Lombardo V.S. at 1-3; 6-9. This case illustrates not only the continuing erosion of the common carrier obligation of railroads but the need for the Board to reassert its regulatory jurisdiction where market forces are insufficient to protect consumers against the abusive practices of large railroad oligopolies.

WTL seeks a declaratory ruling that the Railroads' proposed termination of the Trailer Use Agreements and refusal to handle the subject trailers as "rail controlled" in common carrier service constitutes violations of the car service provisions of 49 U.S.C. 11121(a)(1) as well as unreasonable practices under 49 U.S.C. 10702(2) and 10704(a)(1). WTL asks the Board to issue (1) an order initiating a proceeding and holding a hearing under 49 U.S.C. 11121(a)(1), (2) a declaratory ruling that certain practices of the Railroads violate 49 U.S.C. 11121(a)(1) and constitute unreasonable practices under 49 U.S.C. 10702(2) and 10704(a)(1) and finding that the Railroads must continue handling WTL's trailers as "rail controlled" in keeping with their common carrier obligation to furnish safe and adequate car service under 49 U.S.C. 11121(a)(1); (3) a "housekeeping" stay to maintain the status quo of the relationships between the Railroads and WTL

during the pendency of these proceedings; (4) an order permanently enjoining the Railroads from violating these provisions; and (5) an order granting such other relief as may be just and reasonable.

QUESTIONS PRESENTED

This proceeding presents the following novel questions involving TOFC transportation:

- 1) Do the simultaneous actions of the Railroads withdrawing from handling trailers as "rail controlled" violate their statutory common carrier duty under 49 U.S.C. 11121(a)(1) to provide "safe and adequate car service" and "establish, observe, and enforce reasonable rules and practices on car service" including facilities and equipment and constitute unreasonable practices in violation of 49 U.S.C. 10702(2) and 10704(a)(1)?
- 2) If the Board concludes that the Railroads' actions violate the statute, does the Board have the power to order them to cease and desist by granting temporary relief during the pendency of these proceedings through a "housekeeping" stay and permanent relief to enjoin their actions?

DISCUSSION

1. Do the simultaneous actions of the Railroads withdrawing from handling trailers as "rail controlled" violate their statutory common carrier duty under 49 U.S.C. 11121(a)(1) to provide "safe and adequate car service" and "establish, observe, and enforce reasonable rules and practices on car service" including facilities and equipment and constitute unreasonable practices in violation of 49 U.S.C. 10702(2) and 10704(a)(1)?

The simultaneous withdrawal of the Railroads from utilizing "rail controlled" trailers as part of their equipment fleet in favor of handling customer-provided "private" trailers violates their statutory car service obligation. The subject dispute began with WTL's receipt of a BNSF Marketing News release, dated April 18, 2005, along with a letter dated April 15, 2005, terminating the BNSF/WTL September 1, 2000, Equipment Use Agreement. BNSF's press release characterized its action as a "transitioning" out of managing rail trailers so it could focus its attention on its "core" business of providing line haul service. The release announced that it would treat the heretofore "rail controlled" BMDZ and WTLZ-marked trailers as "private" units, effective May 18, 2005, and effective in June and July 2005 with certain other units. See, Lombardo V.S. at 6-7; Ex F. BNSF's actions unleashed a virtual "tsunami" of actions adversely affecting WTL and the few other providers of "rail controlled" trailers. Right on the heels of that announcement,

on April 20, 2005, an NS Intermodal News announcement declared that trailers bearing BMDZ and WTLZ designations would be treated as "private" trailers effective May 20, 2005, with trailers bearing REDZ, REAZ, and RXXZ markings to follow during the next couple of months. Lombardo V.S. at 7; Ex G. Announcements and cancellation notices from UP, KCS, and CP followed in rapid succession, leaving CSX and CN as the only railroads continuing to handle WTL and other marked trailers as "rail controlled."⁸ Although each of these actions appears to have been taken individually, they have had a domino effect on the shipping public as Mr. Lombardo explains in his statement. Lombardo V.S. at 6; see also, verified statement of John Robinson at 2-3. Thus, when one railroad in the national chain chooses to opt out of a particular line of business or equipment that moves over multiple carriers, the connecting carriers have little choice but to take similar action. Id., Lombardo V.S.; Robinson V.S. So what might otherwise be an action of a more limited scope quickly ripples throughout the industry.

As relevant, 49 U.S.C. 11121(a)(1) states:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Board may require a rail carrier to provide facilities and equipment that are reasonably

⁸ Each of these announcements and letters is attached to Mr. Lombardo's statement.

necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service. The Board may begin a proceeding under this paragraph when an interested person files an application with it. The Board may act only after a hearing on the record...

The STB should not interpret the paucity of recent precedents relating to the car supply obligations of railroads as any indication that it is powerless to act in the instant proceeding. This case presents an important policy issue requiring the Board's intervention: The continual erosion of the common carrier obligations of the Nation's railroads. During the past few decades, the ICC and now the STB have witnessed the continued "dumbing down" of this crucial industry and its infrastructure. Citing reasons as varied as unfair competition, financial pressures, and tight capacity, the Nation's railroads have shed passenger service, branch lines, express traffic, less-than-car load freight, yards and shops, multi-track mainlines, secondary lines, specific types of rail cars, and now common carrier TOFC service. While some of these changes may have been necessary, one begins to wonder if the industry is casually evolving into a mode that just transports specified products for a few favored customers rather than for the public at large. So long as the concepts of "common carriage" and the "public convenience and necessity" remain on the books, doesn't the Board have an obligation to enforce the implementing provisions? If

the Class I railroads are to be relieved of their common carrier obligation, that is a matter more appropriate for the Congress' attention.

That being said, a review of recent - albeit limited - case law involving sections 11121(a)(1), 10702(2), and 10704(a)(1) suggests that the Board has the power and the duty to act in cases involving claims, whether couched in terms of car service or unreasonable practices, involving rail car unavailability. See, Shippers Committee v. Ann Arbor Railroad Co., 5 I.C.C.2d 856, 863 (1989) (hereafter SCOT-5) aff'd sub nom. Shippers Committee, OT-5 v. ICC, 968 F.2d 75 (D.C. Cir. 1992), and other cases cited in Grain Land Coop v. Canadian Pacific Limited, et al, STB Docket No. 41687, decision served Dec. 8, 1999. Moreover, the former Interstate Commerce Commission held as recently as 1994 that the actions of a railroad unilaterally foisting some of its car supply responsibilities onto its shippers is a violation of section 11121(a)(1). Liability for Contaminated Covered Hopper Cars, 10 I.C.C.2d 154, 163 (1994) (hereafter Liability for Contaminated Covered Hoppers).

The Railroads' decision to withdraw from the business of providing "rail controlled" equipment for shippers by canceling Trailer Use Agreements with WTL and other providers has jeopardized their ability to fulfill their car service obligations under 49 U.S.C. 11121(a)(1), adversely affecting the

needs of its shippers. Section 11121(a)(1) requires a rail carrier "to furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service." Section 11121(a)(1) specifically authorizes the Board "to require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate service if the Board decides that a rail carrier has materially failed to furnish that service." Section 11121(a)(1), requiring railroads to furnish safe and adequate car service, refers to "locomotive, freight car, or other vehicle [emphasis supplied] and the ICCTA's definitions indicate that "car service" includes "other vehicles and special types of equipment used in the transportation of property by a rail carrier." 49 U.S.C. 10101(2).

Indeed, there is no question that the Board has jurisdiction over trailers generally and WTL's trailers in particular. Cf. G&T Terminal Packaging Co. v. Consolidated Rail Corp., 830 F.2d 1230, 1235 (3d Cir. 1987) (the agency retains jurisdiction to deal with exempted transportation as it can revoke an exemption at any time). "Trailers" are within the ambit of property identified in the I.C.C. Termination Act ("ICCTA") constituting a "railroad."⁹ Trailers fall within the universe of equipment that can be the subject of an equipment recordation at the Board. See, 49 U.S.C.

⁹ "Railroad" includes "a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad." 49 U.S.C. 10102(6)(A).

11301.¹⁰ The ICC has explicitly stated that "trailer service" is included in the scope of the TOFC deregulation. See discussion in Crab Orchard, infra. (where the ICC ruled that TOFC service was exempted from all [emphasis supplied] provisions of the Interstate Commerce Act).

WTL's Richard Lombardo has testified at length as to how the nation's trailer pool has been shrinking over the years to the point that its future existence is in doubt. Lombardo V.S. at 5-6; Robinson V.S. at 5. Moreover, WTL's supporting shippers have submitted letters stating that they need the trailers furnished by companies like WTL to meet their transportation needs. See shipper letters of San Andreas Fast Forwarding, Inc., and Alliance Shippers, Inc., appended to Mr. Lombardo's statement. Absent action by the Board here, the Railroads will no longer furnish "rail controlled" trailers to meet continuing customer demand in violation of their statutory car (trailer) supply duty. Robinson V.S. at 4, 6.

The Railroads' actions likewise constitute unreasonable practices under 49 U.S.C. 10702(2) and 10704(a)(1).

Section 10702(2) states:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable-

¹⁰ 49 U.S.C. 11301 refers to recordation of various types of leases and encumbrances on "vessels, railroad cars, locomotives, or other rolling stock or accessories used on such vessels, railroad cars, locomotives, or other rolling stock intended for a use related interstate commerce."

(2) rules and practices on matters related to that transportation or service.

And section 10704(a)(1) adds as relevant:

When the Board, after a full hearing, decides ... that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation.

The statute (and presumably the cases) do not specifically define the term "unreasonable practice." Rather, the Board's predecessor, the Interstate Commerce Commission ("the ICC"), has said that it must review a carrier's actions according to the congressional directions embodied in the various relevant provisions of the Act to see whether they constitute "unreasonable practices." See, Liability for Contaminated Covered Hoppers at 168; SCOT-5 at 863. While WTL's research has not identified any agency decision holding that cancellation of any form of trailer use agreement is a statutory violation, SCOT-5 suggests that it might be an abuse of market power under certain circumstances.¹¹ Furthermore, the ICC has also found that a railroad's attempt to shift its common carrier car supply duties to its customers is an unreasonable practice. Liability for Contaminated Covered Hoppers at 168.

¹¹ There the ICC held that the railroad's refusal to enter into OT-5 agreements was "not a per se abuse of market power" but it, nevertheless, ordered the railroads to enter into agreements to assure shippers of car availability when carrier cars would be unavailable. Id. At 870.

The Railroads' actions here constitute an egregious violation of the country's rail transportation policy as articulated in 49 U.S.C. 10101. As relevant, those policies include:

1. to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail, sec. 10101(1);
2. to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense, sec. 10101(4);
3. to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes, 10101(5); and
4. To operate transportation facilities and equipment without detriment to the public health and safety, 49 U.S.C. 10101(8); and
5. to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination, 49 U.S.C. 10101(12).

To the extent that the Board allows the Railroads to cancel Trailer Use Agreements and cease providing "rail controlled" trailers as part of their equipment fleet, the public interest is

subverted and the statutory rail transportation goals go unmet. More specifically, the Board is depriving a segment of the shipping public, the smaller shippers, the option of using common carrier intermodal rail service by forcing them to use either containers or for-hire trucking or to provide their own trailers as "private" equipment, thus eliminating a competitive alternative contrary to several of the goals cited above. Lombardo V.S. at 5-6, 9.

Furthermore, as John Robinson points out in his statement nothing in the Code of Trailer Service Rules permits railroads to unilaterally decide they can no longer recognize certain "rail controlled" reporting marks, effectively turning these trailers into private equipment. Robinson V.S. at 3. To the extent that the AAR and its member railroads are unwilling or unable to police railroads' compliance with the Trailer Service Rules, it is incumbent upon the Board to do so to protect the shipping public. Robinson V.S. at 5. And the former I.C.C. has recognized that it is the agency's duty to enforce rules adopted by the railroad industry involving car hire and related issues. Rules for Car-Hire Settlement, 160 I.C.C. 369, 376, 444 (1930).

As WTL notes in the accompanying Petition for Revocation, there are almost no reported regulatory cases involving intermodal transportation or TOFC equipment. In fact, the only agency precedent on point is No. 40774, American Rail Heritage,

Ltd. D/B/A Crab Orchard & Egyptian Railroad, et al (slip op.), served June 16, 1995, hereafter cited as Crab Orchard) (where the ICC stated that TOFC service was exempted from all [emphasis supplied] provisions of the Interstate Commerce Act). That case involved CSX's cancellation of its Trailer Use Agreements with the complaining railroads and its refusal to either accept loaded TOFC trailers and/or pay compensation for their use. The ICC (Commissioner McDonald dissenting) never addressed the issue of whether CSX's cancellation of the trailer interchange agreements violated the statute as unreasonable practices under the present sections 10702(2) and 10704(a)(1) as well as a violation of the car service provisions of section 11121(a)(1) because it found that the Complainants had failed to meet the statutory standards for revocation of the TOFC exemption. However, the majority's statement -

In reaching this conclusion [not to grant complainant's request for relief], we do not want class I carriers to interpret what we do here today as a license to begin making imprudent unilateral decisions regarding the interchange of equipment with class III carriers. The Commission has an affirmative duty to help keep the playing field level between class I and class III carriers, and we will take action, when appropriate, to fulfill that obligation. Indeed, it may be that someone, in the future, will demonstrate that TOFC/COFC Exemption should be revoked in part, so that we can regulate the interchange of intermodal equipment -

suggests that there are circumstances when the Board might view the cancellation of an agreement for interchange (or a use

agreement) of a trailer as a violation of one of more provisions of the ICCTA. Id. at 5.

While WTL agrees with Commissioner McDonald's conclusion that CSX's behavior in the Crab Orchard presented a clear case of market abuse, this petition presents an even stronger example. In 1995, CSX was one of three major eastern railroads and one of about ten major Class I railroads. Today there are just two major eastern railroads and seven major national railroads. The decision by one carrier to terminate its Trailer Use Agreement spawned actions by four other carriers canceling their agreements and refusing to handle trailers except as "privates." Thus, the actions of the Railroads effectively deny customers intermodal rail access to the entire national rail network without any sort of regulatory review and approval.

Moreover, as noted by Mr. Lombardo and the supporting shippers,¹² the elimination of rail controlled trailers will force shippers to find more expensive but unsatisfactory alternatives. Thus WTL's trailers are captive to a rail system that will not accept them and are also unacceptable to motor carriers that want to handle the longer 53' units that are rejected by some railroads. This factual scenario is exactly the situation which Commissioner McDonald depicted and described in Crab Orchard as worthy of relief by the ICC. But industry

¹² Statements of San Andreas Fast Forwarding, Inc., and Alliance Shippers, Inc., attached to Mr. Lombardo's statement.

developments between 1995 and the present in terms of the increased marketing power and gateway restrictions concentrated in a handful of major railroads and the continued shrinkage of the trailer fleet warrant the relief sought in but denied by the ICC majority in Crab Orchard.

2. If the Board concludes that the Railroads' actions violate the statute, does the Board have the power to order them to cease and desist from further violations of the statute by injunction or otherwise?

Should the Board find that the Railroads' practices violate the ICCTA, there is no question but that the agency has the power to act through issuance of a cease and desist order. SCOT-5, supra at 579 (where the ICC ordered railroads to cease and desist from denying OT-5 approvals except as noted therein); Buckeye Cellulose Corp. v. L&N R.R. Co., 1 I.C.C.2d 767, 771 (1985) ("upon finding that a practice is unreasonable, we may order the carrier to stop the violation"); and APL Land Transport Services, Inc. v. The Burlington Northern And Santa Fe Railway Company, STB Docket No. 42003, served July 14, 1999 (STB ordered BNSF to cease and desist from violating a tariff requirement for returning APL's double stack cars).

Once the Board grants WTL's partial revocation of the TOFC exemption and determines that the Railroads have violated the statute, the Board has the power and the obligation to take appropriate action. Cf. STB FD No. 33989, Pejepscot Industrial

Parks, Inc. d/b/a Grimm Industries-Petition for Declaratory Order at 6-8 (slip op., served May 15, 2003) (where the Board ordered the railroad to provide the shipper with common carrier rates and service during the period before the commodity exemption became effective).

Pending the conclusion of its proceeding, the Board has adopted the practice of imposing what it calls a "housekeeping" stay to allow it to consider the issues presented without a change of the status quo. The Burlington Northern And Santa Fe Railway Company - Acquisition And Operation Exemption - State of South Dakota, STB FD No. 34645, decision served December 29, 2004. WTL's Petitions present the need for such a housekeeping stay. By the time the Board is able to consider and rule upon WTL's requests, the agreement cancellations would have occurred taking the "rail controlled" trailers out of service.

Section 721(b)(4) of the ICCTA, 49 U.S.C. 721(b)(4) specifically grants the Board the authority to "issue an appropriate order" when necessary to prevent "irreparable harm." The harm that would befall WTL and the small shippers which use its trailers in railroad TOFC service militates in favor of the Board's entry of a housekeeping stay to maintain the status quo pending the outcome of this proceeding. To obtain such relief, the movant must satisfy the four part test articulated in Washington Metropolitan Area Transit Comm'n v. Holiday Tours, 559

F.2d 841, 843 (D.C. Cir. 1977): (1) a substantial likelihood of success on the merits; (2) irreparable harm in the absence of the requested relief; (3) issuance of the order will not substantially harm other parties; and (4) granting the relief is in the public interest.

Based upon past relevant precedent, there is a substantial likelihood that the Board would partially revoke the TOFC exemption to consider WTL's declaratory request. See, Granite State Concrete Co., Inc., et al v. Boston And Maine Corporation (STB Docket No. 42083, slip op. at 7-8, served September 15, 2003) (where the Board partially revoked a commodity exemption on its own motion in order to consider complainants' request that the defendant railroad breached its duty to provide common carrier rail service or committed unreasonable practices). Moreover, once the Board initiates a proceeding holding a hearing and applying pertinent rail car supply precedent, there is a substantial likelihood that it would rule on the merits for WTL. Indeed, WTL believes that its petition presents the sort situation similar to that in Crab Orchard calling for Board intervention. Testimony from WTL witnesses Lombardo and Robinson depict the irreparable harm the public will suffer absent Board action. See Lombardo V.S. at 5, 9; Robinson V.S. at 2, 4. Issuance of a cease and desist order enjoining, temporarily and permanently, Railroads' proposed actions will not harm any

parties as it will merely maintain the status quo. Finally, WTL's Petition presents serious public interest issues concerning the scope and the very continuation of the common carrier obligation of class I railroads, a topic worthy of in-depth Board analysis as well as legislative consideration.

PROCEDURAL SCHEDULE

Accordingly, WTL requests that the Board act promptly to solicit public comment in connection with its Petition for Declaratory Relief. It proposes the following schedule:

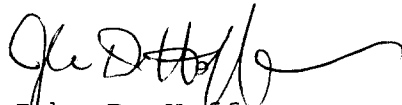
Filing:	Due:
Petition for Declaratory Relief Filed at STB	Day 0
Petitioner's evidence, supplemental argument due	Day 40
Respondent's reply evidence and argument due	Day 70
Petitioner's rebuttal due	Day 100
Board decision issued	Day 180

CONCLUSION

Wherefor, WTL requests that the Board initiate a proceeding for a declaratory order under 5 U.S.C. 554(e), 49 U.S.C. 721, and 49 U.S.C. 721(b)(4). WTL seeks a declaratory ruling that the Railroads' proposed termination of the Trailer Use Agreements and refusal to handle the subject trailers as "rail controlled" in common carrier service constitutes a violation of the car service

provisions of 49 U.S.C. 11121(a)(1) as well as an unreasonable practice under 49 U.S.C. 10702(2) and 10704(a)(1). WTL asks the Board to issue (1) an order initiating a proceeding and holding a hearing under 49 U.S.C. 11121(a)(1), (2) a declaratory ruling that certain practices of the Railroads violate 49 U.S.C. 11121(a)(1) and constitute unreasonable practices under 49 U.S.C. 10702(2) and 10704(a)(1) and finding that the Railroads must continue handling WTL's trailers as "rail controlled" in keeping with their common carrier obligation to furnish safe and adequate car service under 49 U.S.C. 11121; (3) a "housekeeping" stay maintaining the status quo during the pendency of these proceedings; (4) an order permanently enjoining the Railroads from violating these provisions; and (5) an order granting such other relief as may be just and reasonable.

Respectively submitted,



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Dated: May 4, 2005

VERIFIED STATEMENT OF RICHARD M. LOMBARDO
PRESIDENT, WTL RAIL CORPORATION

My name is Richard M. Lombardo. I am President of WTL Rail Corporation and the following is my verified statement of facts supporting WTL's Petition for Partial Revocation of the TOFC/COFC Exemption and Petition for Declaratory and Interim Relief.

I began my railroad career over forty-two years ago in 1963 with the Rock Island Railroad, in Chicago, IL. Over this time I held numerous management positions in Transportation – Fleet Management, Marketing – Equipment Analysis, Intermodal Marketing and Operations, Industrial Development and Car Accounting. During that time and to the present, my primary background has been and still is in the fields of equipment management and car service. In 1992 I started WTL, after leaving my former position as Assistant Vice President – Equipment Management with the Iowa Interstate Railroad.

As WTL's Petitions for Partial Revocation of Exemption and Declaratory Relief note, WTL is a small, closely held Delaware corporation with offices in the Chicago suburb of Palos Heights. It is a non-railroad entity engaged in the business of renting truck trailers to railroads to fulfill their obligation for supplying the public with trailers for the movement of truck-oriented freight by rail, a type of intermodal transportation known as trailer-on-flat-car service ("TOFC") service. WTL presently owns or leases a fleet of over 950 48' TOFC trailers¹ that it furnishes to railroads to meet their common carrier trailer service obligation to shippers under a commonly accepted type of agreement

¹ Most of these trailers were previously used by trucking companies in "over-the-road service."

known as a "Trailer Use Agreement." WTL has a Trailer Use Agreement with each of the major railroads serving the country.

To better understand the complexities of WTL's Petitions, it is important to explain certain specific trailer use distinctions. As a general matter, the Association of American Railroads ("AAR"), the railroad industry trade association, maintains a series of rules governing the use and maintenance of different types of railroad equipment. Insofar as intermodal trailers are concerned, the AAR has two sets of relevant industry rules: first, the Code of Trailer and Container Service and Reporting Rules and, second, the Intermodal Interchange Rules (collectively "the AAR RULES"). To the extent that WTL's Trailer Use Agreement does not address specific operating issues with the railroads with whom WTL contracts, it incorporates provisions from the AAR RULES. A number of the industry's car service-related rules have been incorporated in various ICC Car Service directives from time to time, and should the current TOFC/COFC exemption be partially revoked, similar action could be initiated by the Board with regard to trailer service issues.

Under the AAR RULES, there are two basic types of trailers in use today. The first type is known as a "rail-owned/controlled" trailer. It includes equipment owned or controlled by railroads or non-railroad equipment providers such as WTL and furnished by a railroad in common carrier service to meet, its obligation under car service and the trailer needs of individual customers, frequently smaller shippers. The second type is called a "private trailer." It includes over-the-road trailers owned by trucking companies or

express carriers such as United Parcel Service. These trailers are used to meet the needs of those carriers and their customers, not the needs of the railroad's customers.

The handling of "rail-owned/controlled" trailers is governed by the AAR RULES. These rules provide for the equal treatment and collective participation in a national non-restricted use, single common public pool (POOL).² WTL satisfied its AAR requirements in 1992 for assignment of reporting marks designating its trailers as "rail-controlled" for this Classification and exclusive use by railroads. The principal distinction between "rail-owned/controlled" and private over-the-road trailers for the purpose of these proceedings is two-fold. Under the Trailer Use Agreements and the AAR RULES, railroads are (1) entitled to use a "rail owned/controlled" trailer in common carrier service as if it is their own or return such trailer via reverse route or to the owner (this is known as "trailer service"); (2) responsible for paying trailer providers such as WTL compensation for the short term use of a trailer (this is known as "trailer hire" or a "trailer use charge"); and (3) responsible for performing running repairs at owner's expense and repairing or reimbursing owner for any damage incurred by a trailer while operating in a railroad's service or under its control. This type of service [the movement of "rail owned /controlled trailers"] commands higher freight rates to compensate carriers for their obligation to handle empty trailers. All of the above mirrors the handling structure of the "Car Service" rules for general-purpose railcars. Conversely, railroads handle private trailers move under contract. As with privately marked railcars, railroads do not pay a private owner for the use of a trailer, are not free to use a private trailer to meet their

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WTL distinguishes an equipment pool from a pooling of traffic or revenues subject to the approval requirements of 49 U.S.C. 11323.

common carrier obligation to furnish equipment to shippers, and are not responsible to the equipment owner for performing or reimbursing for owner repairs.

At the time the former Interstate Commerce Commission (ICC) deregulated TOFC/COFC service in 1981, the trailer POOL totaled³ 117,000 trailers owned by forty-eight participating Class I, II and III railroads and a handful of "rail-controlled" providers similar to WTL. As a result of the ICC's TOFC exemption, it became necessary for the parties owning or controlling trailers (railroads and non-railroad providers) to negotiate with the trailer users, the railroads, an agreement ["the Trailer Use Agreement" identified previously] for compensation for trailer use, charges for trailer repairs and damages and settlements for trailer casualties. By 1991, the year before I started WTL, the national pool totaled 95,000 trailers, with annual originated trailer loadings of 3 million. At that time twenty railroads owned or controlled 40% of the "rail owned /controlled" equipment fleet and nine nonrailroad entities owned or controlled the remaining 60%.⁴ Since 1991, Class I railroads have shifted their intermodal equipment focus from owning trailers to investing in fleets of domestic containers and relying primarily on "rail-controlled" trailer providers to meet their on-line common carrier trailer obligations. Today, the national level of pool trailer ownership is considerably smaller in both size and ownership, for a reported total of only 55,000 pool trailers, contributing to only one half of the 2.7 million annual originated trailer loads estimated for 2004. Only one Class I railroad (the Burlington Northern And Santa Fe Railway Company) reports ownership of trailers

³ Source Official Intermodal Equipment Register, Section D-1, Railroad Trailer/Container Equipment Summary.

⁴ I have included in the "rail-controlled percentage," trailers owned by certain Class III railroads which function primarily as trailer providers and not as users (i.e. carriers).

(5,000 trailers) but has recently announced retiring their fleet. Two major "rail-controlled" providers, XTRA and TIP, report 73% or 44,000 of the pool trailers, and WTL and two Class III railroad providers (the Kankakee, Beaverville & Southern Railroad and the Vermont Railway) collectively report 6,000 trailers.⁶ Given the current age and lifespan of many "rail-owned/controlled" trailers and the fact that no new 53' units are being allowed to replace retiring units, the trailer pool utilized by small shippers is in danger of shrinking in the next few years to the point where railroads will no longer be able to provide sufficient trailers to meet normal existing demand. Additionally, railroads are rapidly discontinuing or totally eliminating established trailer routes. Because of such practices, shippers that seek to utilize common carriers to move their product are being forced to forego the use of these trailers and will, in turn, be forced to pay a premium for other slower and or more expensive transportation alternatives (i.e. using truck-load and less-than-truckload motor common carriers, motor contract carriers, and setting up private trucking operations). Such a result would be contrary to the national transportation policy from the twin perspectives of energy conservation and adverse environmental impacts.

The facts leading to the present emergency are as follows.

On April 13, 2005 Mr. Ed Zajac, Assistant Vice President Intermodal Equipment Burlington Northern Santa Fe Railway Company (BNSF) called to advise that BNSF

5 The Official Intermodal Equipment Register "Section D-1 "Railroad Trailer/Container Equipment Summary.

would be serving a thirty day notice of cancellation on April 18th to our September 1, 2000 WTL's Trailer Use Agreement along with similar cancellations to other "rail-controlled" trailer owners. His reasons followed the same outline as published in the BNSF April 18, 2005 "Marketing News" letter to their customers (attached to this statement as Exhibit F-1). Mr. Zajac described BNSF's timetable for "transitioning" out of rail-controlled trailers. He stated WTL's trailers would be accepted as private trailers by the BNSF assuming a.) there would be adequate remarketing opportunities for these "rail controlled" trailers and b.) that BNSF has the 'authority' to redesignate a registered rail-controlled trailer as a "private". I informed him that BNSF's action would be harmful on a national scale by creating a "domino effect" of similar cancellations by other Class 1's, which in turn would destroy the operational integrity of the national general-purpose trailer pool. Since this is also a Car Service issue, I asked if BNSF had contacted the other Class 1's to ascertain their intentions. He advised "no" on advice of counsel. Second, I told him that WTL has a petition pending with the Surface Transportation Board against another Class 1, involving among other issues, a "threatened cancellation of WTL's trailer use agreement as an unreasonable practice. Third, I advised him that WTL's trailers are captive to rail; and their presumption that WTL or the other affected trailer owners or, for that matter, intermodal operating companies or shippers, are competent to manage or have access to a national infrastructure essential for managing a national trailer fleet is misguided. I said that this is the domain reserved for railroads and national motor carriers. Finally, I told him that BNSF would be turning its back on its duty to provide common carrier TOFC services, which could possibly jeopardize its tax exemptions (i.e. fuel tax and state tax

exemptions). He replied that BNSF common carrier TOFC activity has diminished significantly over the years, in favor of private trailers, believing the disruptive impact would be modest (on their line) and that this traffic would be absorbed by door to door intermodal providers (Motor Carriers). I advised the reason common carrier TOFC traffic has dropped off on the BNSF and other Class 1's is through manipulation by discontinuing rail TOFC routes and declining to accept 53' over the road standard length trailers as replacements for the older 45' and 48' rail trailers. On April 18, 2005 WTL received an official written notice of cancellation from the BNSF (attached here as Ex. F-2).

As expected under AAR Trailer Service Rule 1, BNSF's action immediately triggered more cancellations, like a house of cards: first from the Norfolk Southern Railway (NS) Web page Intermodal News letter dated April 20th listing WTL reporting marks effective May 20th 2005, then official written notice dated April 27, 2005 from Mr. Lawrence R. Fabits, Group Manager Intermodal Equipment, effective May 31, 2005. Mr. John P. Smith, Director Intermodal Assets Union Pacific Railroad (UP) emailed its cancellation notice also on April 20, 2005 to be effective May 21, 2005, with the hard copy received a few days later. Mr. Mike Leveille, Intermodal Cube Planner, Canadian Pacific Railway (CPRS) and Mr. Adam Rodery, Manager Intermodal Measurements, Kansas City Southern (KCS) also acting in behalf of the Texas Mexican Railway (TexMex), sent emails on April 25, 2005 serving 30-day notice of cancellation. Each of these notices is attached as Exhibits F-1 through J. To date, only Canadian National (CN) and CSX

Intermodal (CSXI) continue to handle "rail controlled" trailers.⁷ The reaction by the other Class 1's was by default. As the originating carrier, their railroad can't risk being caught with a loaded rail trailer, at an interchange point that neither the trailer owner is set up to manage and the receiving carrier won't accept in common carrier service. Under the AAR Rules the originating carrier is liable for car hire if a trailer owner has no use agreement with the connecting carrier.

Accordingly, during the initial period starting May 18, 2005 through July 15, 2005, all Class 1 railroads (except for CSXI and CN) will no longer accept over 30,000 "rail-controlled" trailers in interchange service. The affected equipment represents more than 50% of the entire existing national trailer pool, not just that of WTL. The severity of these actions will create a national shortage of equipment of such magnitude as to have substantial adverse effects on shippers. The remaining pool trailers will be inadequate to handle sustain shippers needs. For the short term the non-barred trailers will either be hoarded by a handful of customers or abandoned while shippers try to find other more expensive but temporary means of transportation service. There is no surplus equipment

⁷ CN in response to the BNSF and subsequent other Class 1's actions is amending its trailer use agreements so as not to be held responsible for car hire when interchanging to another non-agreement carrier. CSXI plans to continue to provide common carrier TOFC services, relying exclusively on "rail-controlled" trailers and operates its program in a self-contained environment which they recently implemented in January 2005. This has caused a hardship and disruption to the natural flow of pool trailers, but not to the scale of this current action. It is indicative, however, to the attitude of separation of services by various Class 1's. CSXI is relying on an available "floating" supply source drawing from the trailer pool to add trailers as demand rises and to terminate them as demand drops. CSXI controls approximately 8000 to 10,000 rail trailers on line during normal shipping periods, they will also be negatively affected by these cancellations, as their contemplated trailer source dries up. Thus the adage that the party who controls the equipment controls the freight, rates and customers becomes of paramount importance.

capacity in our industry to offset this huge trailer loss, at least not in the short term, and especially not by the fall rush to get consumer goods into stores for the Christmas Season.. BNSF attempts to offer an alternative use for these "barred" trailers by suggesting that they be used in "private service," knowing they neither have the right to make such an offer in the first instance and that operationally it would be an impossible task for the affected trailer owners as well as shippers and intermodal marketing companies to effectively manage.

Allowing such practices to go unchecked would allow carriers to use their marketing, pricing, and other practices permissible under the "gray area" of deregulation in a manner contrary to the Congressional objectives of the public interest. As clearly stated in the title of its proceeding, "Improvement of TOFC/COFC Regulation," the primary purpose for exempting regulation was to enhance to the maximum extent possible competitive efficiencies by encouraging the movement of "truck oriented freight by rail" and its demand for services through every possible means and choice of equipment common to the industry. While the types of equipment used to provide transportation have evolved from boxcars to trailers to containers, certain shippers will always have a need for trailers. These are shippers, usually small shippers, that utilize rail service but are not located on a line of railroad. In those instances only a trailer, and not a boxcar or a container, can move more economically or faster from an origin through a point of interchange on a line of railroad(s) to such an off-line destination or visa versa. Therefore, railroads must furnish a means to provide and transport trailers in common carrier service.

Although railroads appear to be willing to handle TOFC service, they don't want to be responsible for managing the empty side of the move, which they perceive as a non-revenue producing event. This perception is false of course since the inbound rate is priced to recover the cost of an empty move.. The empty movement of equipment by no means is unique to trailers. Containers move empty. In fact, every type of railcar moves empty with the previous loaded moves being priced accordingly. Car Service is dedicated to the handling of empty equipment nationally. Upon closer examination, the problem is how to balance a carrier's public convenience and necessity duty to provide facilities and equipment for the public is in direct conflict against the realities of congested terminal space and the need to maximize profitability. The phenomenal growth of intermodal service has put terminal space at a premium with rail trailers drawing the short straw, based on their perception of non-revenue empty handling. It is doubtful that this emergency would exist if the terminals were operating at only 50% of their capacity.

If BNSF wanted to phase out its common carrier TOFC service, a better procedure would be for it to gradually discontinue its Plan 2⁸ quotations and "quietly transitioned under the radar. Since pool trailers are recognized as universal instrumentalities of transportation, the physical movement of freight is the primary objective, not trailer ownership. If limited terminal capacity is the underlying problem, the industry will need to find a resolution sooner or later.

⁸ Railroad furnished equipment for TOFC common carrier service.

VERIFICATION

STATE OF Illinois
CITY OF Palos Heights SS

Richard M. Lombardo

Richard M. Lombardo

, being duly sworn according to law, hereby
deposes and states that (s)he is authorized to make the Verification, has
read the foregoing document, and knows the facts asserted therein are true
and accurate as stated, to the best of (her)his knowledge, information and
belief.

Richard M. Lombardo

Subscribed and sworn to before me, a Notary Public, in and for the City of

Palos Heights in the State of Illinois, this 28 day of 2005.
County of Cook.

Lynne Pieroth
Notary Public

My Commission expires:

8/12/07

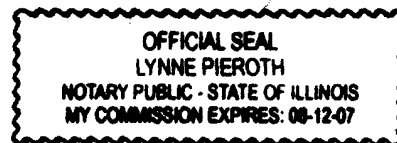


EXHIBIT A

EQUIPMENT USE AGREEMENT

The Burlington Northern and Santa Fe Railway Company (hereinafter "BNSF") proposes to interchange equipment with WTL Rail Corporation - Intermodal, (hereinafter "WTL") in accordance with this Agreement and the Schedules attached hereto, effective September 1, 2000. "Unit(s)" refers to the trailers described in the attached schedules.

1. Equipment Use Charges

- A. BNSF agrees to pay "unit use charges" for units bearing WTL reporting marks referenced in attached schedule(s) while in BNSF's "possession," and WTL agrees to pay BNSF "unit use charges" for units bearing BNSF reporting marks referenced in attached schedule(s) while in WTL's "possession." "Unit use charges" shall be defined as the daily lease charge for units as reflected in the then current schedule(s) to this Agreement. "Unit use charges" shall accrue for every day during which one party's unit is in the other party's "possession." "Possession" shall be defined as a party having control of a unit at 12:01 a.m. of the day in question.
- B. Each party must report unit usage to the unit owner within one month and ten days from the last day of the month in which such usage occurred, including payment for units on hand at the end of that month. When an addition which results from records subsequently received is not reported to the unit owner within two months and ten days from the last day of the month in which it is earned, the use charge rate applicable for such unreported usage shall be increased ten (10) percent.
- C. In the event one party tenders to the other for interchange a loaded or empty unit bearing reporting marks of a third party for movement and if the receiving party has no equipment use agreement with the owner of the unit, the receiving party shall nonetheless accept said unit if the delivering party has an equipment use agreement with the owner and receiving party agrees to assume responsibility for the unit while the unit is in the receiving party's possession to the same extent as if the unit bore the reporting marks of the delivering party. The receiving party shall, in such case, pay the delivering party use charges in accordance with the preceding two subsections as if the unit bore the reporting marks of the delivering party.
- D. BNSF shall not be responsible for payment of "Unit use charges" for empty units bearing WTL marks, when such units are held at any of the BNSF's facilities listed as relief locations in the attached schedules. BNSF shall be entitled to reclaim against WTL and WTL shall credit or pay to BNSF, any use charges which may be assessed against BNSF in violation of the foregoing sentence.
- E. BNSF shall report to WTL receipt of each empty unit bearing the foregoing reporting marks at any of the BNSF's facilities listed as relief locations in the attached schedules on the business day after it is received. Such units shall be considered held, and BNSF shall not be responsible for payment of "Unit use charges" after that date.
- F. WTL, when instructed by BNSF, remove units held under this Agreement from any of the BNSF's facilities listed as termination locations in the attached schedules. Such removals shall be at WTL's sole responsibility and expense. Any units not removed within 48 hours from notification, excluding holidays, BNSF may at WTL's expense, drag the unit to the

WTL location. If BNSF elects to dray units before 48 hours from notification, excluding holidays, BNSF will notify WTL prior to drayage and dray the unit to the WTL location at the BNSF's expense. Any units removed hereunder shall be considered terminated to WTL and BNSF shall have no further responsibility for "Unit use charges" applicable thereto.

- G. If BNSF elects to dray either before or after the 48 hours from notification, WTL must provide a termination location. If WTL fails to provide a termination location or their locations can not accept any units, the BNSF shall move the units to an offsite storage location and WTL shall pay a per day storage fee which is listed in the attached schedules.
- H. For the purposes of computing "Unit use charges" under this Agreement, damaged WTL units shall be considered the same as undamaged units except that BNSF shall arrange for a joint inspection of damaged units held at the facilities listed as termination locations in the attached schedules when damage estimates exceed \$100.00, otherwise each party must submit J-1 or other inspection documentation denoting damage to justify billing.

2. Repair Charges

Each party hereto agrees that while it has any of the other party's units (or units owned by a third party as described in Section 1, subparagraph C) in its possession it will perform any repairs and maintenance required to make and keep such units suitable for loading by a customer. The costs of such repair and maintenance work shall be the responsibility of the party designated in the applicable Schedule(s). All work must be in accordance with the AAR TOFC/COFC Interchange Rules, latest issue, governing the interchange of, repairs to and settlement for, trailers and containers used in trailer/container-on-flatcar (TOFC/COFC) service unless otherwise specified herein.

All on-site repairs, whether performed by railroad employees or contractors, will be billed according to the actual cost thereof, except as otherwise provided. The labor rate for all on-site repairs will be fixed at \$30 per hour at all location. If repairs are performed by an outside shop, billed charges shall equal the actual invoice of said shop. Bills for repairs performed by outside shops shall be supported by actual invoice upon request of the party billed.

Material for on-site repairs will be billed based on actual invoice amount plus 15%. Material expenses will be subject to periodic audit to insure costs are within established norms. Either party may decline or reduce material charges that are shown to be significantly higher than established norms. Written notification must be made to other party of overcharges prior to adjustment of charges.

Invoices may be tendered electronically as often as once per day. All invoices must be tendered within 30 days of the work and paid within 30 days of receipt.

3. Destroyed, Lost, or Stolen Equipment

A. Notification

If it is estimated by the party responsible under the AAR TOFC/COFC Interchange Rules that repairs to a damaged unit, or replacement of a lost, destroyed, or stolen unit, owned by the other party or owned by a third party as described in Section 1, Subparagraph C, will exceed the Casualty Value (as hereinafter defined) of the unit, it shall within 30 days after

5. Indemnity

Each party agrees to indemnify, hold harmless, and defend the other party from and against any and all loss, damage, liability, cost, or expense, including attorney's fees, suffered or incurred in connection with injuries to or death of any person, or loss of or damage to any property, arising out of use, operation, or maintenance of the other party's units while in the first party's possession hereunder, except to the extent that such loss, damage, liability, cost, or expense, including attorney's fees, is caused by the gross negligence or willful misconduct of the other party.

6. Applicability of Other Rules

This Agreement will modify Rule 122 of the AAR TOFC/COFC Interchange Rules and allow the receiving carrier to prepare Form J-2, provided such form is approved by an independent Interchange Bureau utilized by both WTL and BNSF, against the handling or delivering carrier for any equipment received in interchange with unrepaired damage or loss. A copy of J-2 and corresponding J-1 showing the same damage shall be forwarded to the handling or delivering carrier in order to validate authenticity. Except to the extent modified herein, interchange of equipment shall be governed by the AAR TOFC/COFC Interchange Rules and the AAR Trailer and Container Service and Reporting Rules.

7. Amendment

This Agreement may not be altered or amended except by written communication signed by both parties. Such written communication may be in the form of telexes, telegrams, or other telecommunications exchanged between parties. Such written communication will, after mutual concurrence to the terms set forth, become part of this Agreement.

8. Confidentiality

This Agreement and all its terms and Appendices are to be held in confidence by both parties. No information or charges contained in this Agreement are to be released to third parties, with the exception of service agents who collect the owner's use charges; provided, however, that the foregoing shall not prohibit advice by either party to other carriers that it has a equipment use agreement in effect with the other party. All service agents shall be bound by the contracting party to a similar confidentiality obligation preventing release of the terms and conditions contained herein to others. Notwithstanding anything to the contrary set forth above, each party may disclose this Agreement and all its terms and Schedules (i) to any regulatory agency (including any taxing agency), (ii) in response to any subpoena or other legal process, (iii) to any prospective successor or assign which has agreed with such party that, upon disclosure of such information, such prospective successor or assign shall keep such information confidential, (iv) as part of any filing to be made with any governmental authority and (v) to attorneys, accountants and financial, insurance and other independent advisors of any such party.

9. Arbitration

Any disputes arising under the AAR TOFC/COFC Interchange Rules and AAR TOFC/COFC Service and Reporting Rules will be resolved pursuant to the AAR TOFC/COFC Interchange Rules. Any disputes arising under this Agreement will be resolved under binding arbitration under the then-current commercial arbitration rules of the American Arbitration Association, with each party bearing its own costs plus one-half of the joint expenses of the arbitration.

10. Effective, Date, and Term

This Agreement shall become effective as of September 1, 2000, and shall continue in effect until terminated by either party upon thirty (30) days prior written notice to the other party, provided, however, that termination of this Agreement shall not release either party from any liability incurred hereunder prior to the effective date of such termination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

The Burlington Northern and
Santa Fe Railway Company

WTL Rail Corporation - Intermodal

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule No. 1

The Burlington Northern and Santa Fe Railway Company, (hereinafter "BNSF") and WTL Rail Corporation - Intermodal (hereinafter "WTL") are parties to that certain Equipment Use Agreement, (hereinafter "Agreement") dated September 1, 2000. This Schedule No. 1 is attached to and forms a part of the Agreement. The terms and conditions of the Agreement are hereby incorporated by reference into this Schedule No. 1 dated January 19, 2001. All initially capitalized terms not defined in this Schedule No. 1 shall have meanings ascribed in the Agreement. Schedule No. 1 dated September 1, 2000 will expire upon commencement of this Schedule No. 1 dated January 19, 2001.

Description of Equipment

48-ft. x 102-in. trailers having the following marks:

Valid BNSF Trailer Mark: SFTZ

Valid WTL Trailer Mark: WTLZ

Use Charge

\$11.00/day for each 48' trailer

The use charges set forth above apply only to the equipment with the above markings and numbers registered in AAR UMLER files.

Relief Locations

Cicero, Corwith; Willow Springs; Stockton; Richmond; Phoenix; Portland, Omaha, San Bernardino

Termination Locations

Cicero; Corwith; Willow Springs, Omaha

Responsibility for Costs of Maintenance and Repair

The cost of owner's maintenance and repair on the trailers as defined by the then current AAR TOFC/COFC Interchange Rules will be the responsibility of the unit owner.

Approved and Accepted

The Burlington Northern and Santa Fe
Railway Company

By: SE Smith

Title: Director Equip Services

Date: 1-25-01

Approved and Accepted

WTL Rail Corporation - Intermodal

By: R. M. Lombardo

Title: President

Date: 1-22-01

EXHIBIT B



Norfolk Southern Corporation
Material Management Department
110 Franklin Road, S.E.
Roanoke, Virginia 24042-0072

SUBJECT: Trailer Interchange Agreement

August 27, 1992

File: JCS-SVCON-Trailer Interchange Agreements-WTL

R. M. Lombardo, President
WTL Rail Corporation - Intermodal
P. O. Box 522
Blue Island, IL 60406-0522

Dear Mr. Lombardo:

I have enclosed two copies of our proposed Trailer Use Agreement based on your proposal of May 26, 1992. Please execute both contracts for your firm returning one copy to the undersigned.

Norfolk Southern is looking forward to working with you.

If you have any questions, please call me at (703) 981-3645.

Sincerely,

A handwritten signature in cursive script that reads 'J. C. Stewart'.

J. C. Stewart
Manager Service Contracts

W T L RAIL CORPORATION - INTERMODAL

August 31, 1992

P.O. BOX 522
BLUE ISLAND, IL 60406-0522
(708) 489-9001

Subject: Trailer Interchange Agreement

August 31, 1992

Mr. J.C. Stewart
Manager Service Contracts
Norfolk Southern Corporation
Material Management Department
110 Franklin Road, S.E.
Roanoke, Virginia 24042-0072

Dear Mr. Stewart:

I have signed and returned on copy of our Trailer Use Agreement for your files.

I have also taken the liberty of changing two typo's found on page 7, para 13. and page 12, Appendix "A" b. If this is not acceptable kindly advise, otherwise we will look forward to a good working relationship.

Sincerely,

R. M. Lombardo

AGREEMENT FOR INTERCHANGE
AND USE OF TRAILERS

Agreement by and between Norfolk Southern Corporation on behalf of its subsidiaries, including Norfolk and Western Railway Company and Norfolk Southern Railway Company (hereinafter called "NS") and the WTL Rail Corporation-Intermodal (hereinafter called "WTL") dated the 1ST day of September, 1992.

WITNESSETH:

WHEREAS, the parties desire to enter into an agreement for the interchange of trailers and the establishment of charges for the use, repair and compensation for loss, theft or destruction of their trailers while in the other's possession;

NOW THEREFORE, in consideration of the mutual obligations assumed hereunder, the parties agree as follows:

1. Trailer*/ Use Charges. The parties agree to pay to each other use charges, for the use or possession of the owner's trailers when those trailers are used or possessed by the other party (the user). Trailer use charges will apply for each calendar day during which an owner's trailers are in a user's constructive possession.

*/ When "trailer" is used in this agreement, it means trailers bearing railroad reporting marks (not including hybrid marks).

Trailer use charges will be computed in accordance with the following schedule whether the trailers are loaded or empty and without regard to age: \$9.00 per day on 45' x 102" wide trailers; \$10.00 per day on 48' x 102" wide trailers. See appendix "A" for other considerations.

2. Repair Charges. The parties agree to service and repair the other's trailers when necessary and according to the provisions of the AAR TOFC/COFC Interchange Rules, which will be applicable between the parties except as modified below.

Labor charges for repair and servicing performed on railroad property will be billed according to the schedule set forth in Appendix C. Labor charges will be billed according to the various job codes based on the actual hours of labor consumed stated in quarter-hour increments.

Parts for trailer service and tire repairs will be billed on an invoice cost basis, plus 15 percent handling charge. One party may not bill the other party for parts in excess of that which it pays for the same or similar parts.

When repair work is performed off railroad property by contract shop or other outside facility, the parties will bill each other at invoice. However, these invoice charges to the owner must not exceed those charges made by that same shop or facility for similar work on similar equipment of the user's ownership. Verification will be furnished upon request by

supplying an invoice from such shop or facility for similar work on the user's equipment. Outside repair work will be accepted subject to later verification and audit.

Repairs may be performed by the user without consultation with the owner when those repairs do not exceed \$300, exclusive of tires and refrigeration units. For repairs to a trailer which exceed \$300, exclusive of tires and refrigeration units, the parties will consult and will decide in each instance whether the repairs ought to be performed and, if so, at what charge.

3. Transfer and Adjustment of Lading. Transfer and adjustment of lading will be billed on the same basis as repairs.

4. Settlement of Claims for Lost, Stolen, Badly Damaged or Destroyed Equipment. Settlement for lost, stolen, badly damaged or destroyed trailers shall be at depreciated value and shall be calculated on the basis of the depreciation and salvage value schedules and the formula set forth in Appendix D.

A trailer shall be considered destroyed when repairs would exceed the depreciated value less salvage.

In the event the owner party wishes a destroyed trailer returned, the user party shall pay the depreciated value of the trailer less salvage value. In the event the owner party does not wish the destroyed trailer returned, the user party shall pay the full depreciated value of the trailer.

The parties will follow the AAR's TOFC/COFC Interchange Rules, Section M, Rule 157, effective September 1, 1982, for the return of destroyed trailers. Trailers to be returned will follow the most expedient route as set by the user party.

5. Interchange of and Application of Trailer Use Charges, Repair Charges and Settlement Provisions to Third-Party Non-Agreement Trailers. If a party to this agreement, as delivering line, tenders to the other party, as receiving line, a loaded trailer or an empty trailer moving via reverse route for interchange over the receiving party's lines, which trailer is owned by or bears the reporting marks of a third party with whom the delivering line has a use contract but with whom the receiving line has no contract, the receiving line will nevertheless accept such trailer, provided (1) the delivering line has a contract for use with the owner of such trailer, (2) the delivering line will assume the responsibility for the payment of trailer use charges to the owner when the trailer is on the receiving line, and (3) that the receiving line will report to and pay directly to the delivering line trailer use charges as set out above (the use charges the parties have agreed to pay each other).

For third party trailers as to which the delivering carrier has a contract with the owner but the receiving carrier does not, but which trailers are nevertheless handled for the former's account under this agreement, as set forth above, the

parties will each bear repairs for damage occurring on our lines for which the handling line normally is responsible, but will bill back to the delivering line those repairs which are owner's responsibility, when repairs do not exceed \$300, exclusive of tires and refrigeration units.

Settlement for lost, stolen, badly damaged or destroyed trailers or a non-agreement third party, forwarded under the delivering line's account pursuant to this agreement, shall be handled by the receiving line with the delivering line on the basis stated in part 4 above.

6. Responsibility for Movement to Non-Agreement Parties.

If either party to this agreement causes or allows a trailer of the other party hereto to be moved via a carrier with which the latter party has no use contract, the party causing or allowing such movement will be responsible to the owner for use charges and loss, damage or destruction of the trailer (as defined in the AAR TOFC/COFC Interchange Rules) until the trailer returns to the owner or to a party with which the owner has a use contract.

7. Interchange with Water Carriers. A user party to this agreement shall not interchange an owners party's trailers with a water carrier without the permission of the owner.

8. Credit Arrangements. Settlement of bills for trailer use and trailer repairs shall be handled together with and in the same manner as interline settlements for freight car per

diem and car repairs as governed by applicable Disbursement Mandatory Rules 3, 5, 7, 15, 17, 19 and 23.

9. Late Reporting Penalty. When additions to trailer use reports which result from records subsequently received are not reported to the trailer owner and at the agreed rate within two (2) months and ten (10) days from the last day of the month in which the trailer use charge is earned, the use charge rate shall be increased ten (10) percent per trailer per day for each day for which a use charge is due.

10. Claim Procedure and Penalty. Claims not handled in accordance with Rule 11T, Section 3 of the AAR's Code of Trailer and Container Service and Reporting Rules, shall have 20 percent added to the amount claimed.

11. Applicability of AAR Rules. Each party to this agreement agrees to subscribe to or be governed by the AAR TOFC/COFC Interchange Rules and TOFC/COFC Service and Reporting Rules in their relationships with each other except to the extent this agreement is inconsistent with those rules.

12. Non-Severability; Entire Agreement. The terms of this agreement are mutual and interdependent. Acceptance of this agreement is acceptance of all the terms herein. This agreement represents the entire agreement of the parties and may be amended, modified or altered only in writing signed by both parties.

13. Notice. Notice under this agreement for NS shall be addressed to the Vice President Material Management, and for the ~~CC&P~~ ^{WTL and} to the chief intermodal (operating) officer.

14. Arbitration. Any disputes arising under the AAR TOFC/COFC Interchange Rules and AAR TOFC/COFC Service and Reporting Rules will be resolved pursuant to Section K of the AAR TOFC/COFC Interchange Rules. Any disputes arising under this contract will be resolved by binding arbitration under the auspices of the American Arbitration Association, with each party bearing its own costs plus one-half of the expense of the arbitration.

15. Confidentiality. The parties shall keep this agreement and all of its terms in strictest confidence. No charges or other information contained in this agreement shall be disclosed to third parties. The existence of the agreement, but not the terms, shall be disclosed to the Association of American Railroads and may be disclosed to third parties which need to know of its existence because they are subscribers to or governed by the AAR TOFC/COFC Interchange Rules or AAR TOFC/COFC Service and Reporting Rules.

16. Effective Date. This agreement shall be effective September 01, 1992 and shall continue until cancelled in accordance with the terms hereof.

17. Cancellation. This agreement may be terminated upon 30-days written notice by either party except that cancellation may not be effective except upon the close of business of the last day of any given month. Upon cancellation of the agreement, all trailers must be returned to the owner by the termination date in accordance with the terms of AAR TOFC/COFC Service Rule 2. If any trailers are not so returned, the parties agree to pay double the use charge specified in Appendix A of this agreement for each day after the termination date for each trailer that remains on their lines. Termination of this agreement shall not release either party from any liability incurred hereunder prior to the termination date.

By: J. C. Stewart
Manager, Service Contracts
NORFOLK SOUTHERN CORPORATION

As agent for and on behalf of each
of its wholly owned rail carrier
subsidiaries including Norfolk and
Western Railway Company and Norfolk
Southern Railway Company, excluding
Triple Crown Services, Inc.

By: R. M. Lombardo
WTL Rail Corporation-Intermodal
President

APPENDIX C
PAGE I of I

LABOR CHARGE FOR PERFORMING
TRAILER REPAIRS

\$30.00 PER HOUR

APPENDIX D
PAGE I of I

The depreciated values for trailers equal the reproduction cost, less depreciated amount.

- I. Reproduction Cost is calculated by multiplying the trailer's original cost by the AAR cost factor prior to the year in which the equipment was damaged, and this amount divided by the cost factor for the year the trailer was built.
- II. Depreciated amount is calculated by multiplying the reproduction cost by 1/120 and multiplying this value by the number of complete months in service.

The maximum depreciated amount is equal to 90% of the reproduction cost.

NOTE: The reproduction cost of mechanical refrigeration units with all component parts, including fuel tanks or bottles, shall be computed on current market price, using the same 10% per annum rate of depreciation, with maximum depreciation of 95%. This shall be added to the depreciated value of the trailer. The date of installation will be considered the date built.

Salvage values to be determined as follows:

TRAILERS \$72.50 PER WHEEL, PLUS \$100 FOR BOX

MECHANICAL REFRIGERATION UNITS AND ALL COMPONENT PARTS,
INCLUDING FUEL TANKS \$225.00/UNIT

- 11 -

APPENDIX: B INTENTIONALLY NOT USED.

APPENDIX "A"
Page 1 of 1

- A. WTL Rail Corp. will provide Norfolk Southern with per diem relief at all Norfolk Southern Intermodal Facilities. *And*
- B. Norfolk Southern is not responsible for per diem ~~relief~~ on WTLZ trailers while in the possession of any other rail carrier.

WTL RAIL INTERMODAL

FAXED

By: *[Signature]*

Date: 12/4/99

P. O. BOX 325 Palos Heights, IL 60463-0325

Telephone 708.448.9856 Fax 708.448.9851

*MEL
LJR*

December 4, 1999

File: NS Maintenance

Fax 757-664-5164

To: Mike Konrad, NS Intermodal Maintenance

Fr: Rich Lombardo, WTL Rail *[Signature]*

Re: Procedures covering authorization of damages to WTLZ equipment.

In line with our conversation yesterday, December 4, 1999, the following represents our understanding of revised inspection procedures effective December 1, 1999.

- A. For WTLZ trailers on hand NS facilities, when damages are approved and stamped by NS, or agents for NS, no P.O. number is required.
- B. For those events, when a WTLZ unit is returned home by NS or terminated, only damages reported on the NS outgate J-1 or ticket will be allowed without consultation up to \$450.00 (exclusive of tires). Any damages reported on NS outgate J-1 or ticket collectively exceeding upon repair estimates \$450.00 (exclusive of tires) will require upon estimate notice to NS, a stamped approval. NS will promptly arrange for inspection if deems necessary.

No response is necessary if this also meets with your understanding.

EXHIBIT C

AGREEMENT FOR TRAILER/CONTAINER
USE AND REPAIR CHARGES

THIS AGREEMENT, dated as of JUNE 15, 1991, by
and between UNION PACIFIC RAILROAD COMPANY and MISSOURI
PACIFIC RAILROAD COMPANY, and WTL RAIL CORPORATION

sets forth the terms under which either party will each use
and repair trailers and containers owned by the other party
and will each transfer or adjust trailers, containers, or
lading for which the other party to this agreement is
responsible.

RECITALS:

WHEREAS, the Interstate Commerce Commission
has exempted from regulation arrangements among
rail carriers for the use of trailers and
containers in Improvement of TOFC/COFC Regulation
(Ex Parte No. 230 (Sub-No. 5));

WHEREAS, the parties desire to set forth
terms and conditions which will govern their
respective use and repair of trailers and
containers owned by the parties to this agreement
and which will govern transfer or adjustment of
lading, trailers or containers by one party for
which the other party to this agreement is
responsible.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual
promises and covenants hereinafter set forth, the parties
agree to the following terms under which each will use and
repair the trailers and containers owned or leased by the
other:

1. The following definitions shall apply in this
agreement:

- (a) "Owner" is the railroad whose reporting
marks, as assigned by the Association of
American Railroads (hereinafter referred to
as "AAR") pursuant to the Trailer and
Container Service and Reporting Rules, appear
on the trailer or container;

- (b) "User" is the carrier in possession of a trailer or container under the terms of the Trailer and Container Service and Reporting Rules;
- (c) "Equipment" is a trailer or container;
- (d) "Party" is a party to this agreement and its rail carrier subsidiaries.

2. The parties hereby adopt and incorporate as part of this agreement the terms and conditions of the TOFC/COFC Interchange Rules and TOFC/COFC Service and Reporting Rules (which are published by the AAR), as they may be amended from time to time, except as provided in this agreement.

3. (a) Each party will pay, as equipment use charges, the applicable amounts set forth in Appendix A for use of the equipment owned by the other parties, provided that equipment is registered in the AAR Uniform Machine Language Equipment Register File as required by Rule 1-T, Section B, of the Code of Trailer and Container Reporting Rules.

(b) The applicable use charges shall be paid for each calendar day that one party has in its possession, or for which it is responsible in accordance with the provisions of the Code of TOFC/COFC Reporting Rules or this agreement, equipment owned by the other party. No charges will be paid for containers without wheels, containers less than forty feet in length, or a chassis-bogie of any length.

4. User must report use charges to the owner within one month and ten days from the last day of the month in which the use charge is earned, including payment for equipment on hand at the end of that month. When additions which result from records subsequently received are not reported to the party owning the equipment or the correct charges are not paid within two months and ten days from the last day of the month in which it is earned, the delinquent use charges shall be increased by ten percent. The ten percent penalty is not applicable when the party to which the use charges are owed assigns those payments to another person.

5. Where one party files a claim pursuant to Rule 11-T of the Code of Trailer and Container Reporting Rules and the other party fails to pay said claim within the time period specified in Section B9 of that rule, a twenty percent penalty shall be added to the amount due to the party filing the claim.

6. Each party shall have the right to load equipment owned by the other party for movement over any route within the continental United States (except Hawaii or Alaska) over any carriers which have entered into agreements with the owner of the equipment for the use and repair of its equipment. The parties will advise the AAR of the carriers which have entered into agreements with the owner for the use of its equipment. In addition, the owner shall advise the user, upon the user's request, which rail, motor or water carriers have entered into an agreement with the owner for the use of equipment.

7. It is expressly understood and agreed by the parties that Rule 1-T, Section E, of the Code of Trailer and Container Reporting Rules shall not apply in the event either party originates a movement in equipment owned by the other party over a route in which one or more carriers does not have an agreement with the owner for the use and repair of its equipment., except into Mexico. *Ind RMC*

8. Each party shall make repairs to the equipment owned by the other party in accordance with the provisions of the TOFC/COFC Interchange Rules. The owner of the equipment which is repaired by the other party in their shop facility shall pay invoice cost of materials plus a 15% handling charge and \$30 per hour labor when the owner is responsible for such repairs under the TOFC/COFC Interchange Rules. Any repair or service work (excluding the repair of flat tires) performed by a contract shop or outside facility shall be billed to the owner at the actual invoice cost of labor and materials. The rate for the repair of flat tires shall be billed at the actual rate for repairing such tires including charges for service calls regardless of whether on a flat fee or mileage basis. User may not bill owner for any such repair or service charges in excess of that which it pays for similar work at the same shop. Invoices for repair or service (excluding the repair of flat tires) shall show the exact amount of time (in hours and minutes) that work was performed. Invoices for repair or service shall be subject to audit. In the event of any dispute arising in connection with the services performed under this Paragraph, which is arbitrable under Rule 136 of the TOFC/COFC Interchange Rules, either party to this agreement shall have the right to invoke binding arbitration by submitting the dispute to the Arbitration Committee provided for in Rule 136 or its successor organization.

9. In the event equipment owned by a party is destroyed, badly damaged (when estimate of repairs exceeds \$450), or stolen under any condition for which the other party is responsible under the TOFC/COFC Interchange Rules and the cost of complete repairs exceeds the depreciated value of the trailer, less salvage, the line responsible

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under the AAR TOFC/COFC Interchange Rules shall compensate the owner for the depreciated value of the destroyed, damaged or stolen equipment in accordance with Appendix B of this agreement.

10. In the event either party receives a trailer or container and determines that a transfer or adjustment of the trailer or container or lading is required (regardless of whether a party to this agreement owns the trailer or container) and the other party is responsible under Section I of the TOFC/COFC Interchange Rules, the party responsible shall reimburse the party providing the transfer or adjustment service for the cost incurred. Reimbursement for the cost of adjustment or transfer of trailer or container or lading shall be computed on the basis of actual labor and material expense plus 91% applied to the labor portion to cover overhead and fringe benefits and 15% applied to the material portion to cover store expense and handling.

11. Each party will total the number of days for all trailers on Report Form G-1-T or similar mechanically-prepared report and state the total use charges or include the use charges detailed in total as part of Appendix H of the AAR Code of Hire Rules and Interpretations-Freight and will settle such charges as part of the car hire settlement on a sight draft basis in accordance with the AAR Accounting and Disbursement-Mandatory Rule 5.

12. The waiver by either party of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the other party shall in no way impair the right of the party waiving the breach to avail itself of any subsequent breach thereof.

13. Neither party shall assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the other party, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void.

14. Subject to the provisions of paragraph 13 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

15. This agreement shall go into effect as of the first day of the month following execution, as set forth above and as of that date any previous agreements covering use and repair of trailers and containers which may have

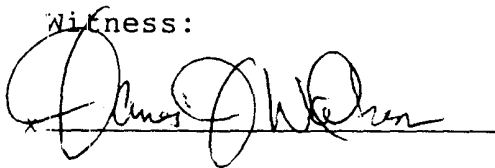
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been in effect between the parties are hereby terminated.
Termination of such agreement shall not release either party
from any liability hereunder incurred before such
termination.

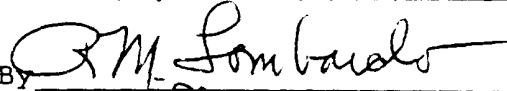
16. This agreement will remain in effect until
terminated by either party on thirty days advance written
notice or until changed by mutual written agreement.
Termination of this agreement shall not release either party
from any liability hereunder incurred before such
termination.

IN WITNESS WHEREOF, the parties hereto have caused
this agreement to be executed in duplicate as of the day and
year set forth above.

Witness:



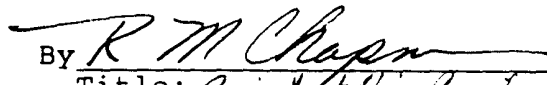
WTL RAIL CORPORATION,

By 
Title: PRESIDENT

Witness:



UNION PACIFIC RAILROAD COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY,

By 
Title: Assistant Vice President -
Intermodal and Refrigerated Services

APPENDIX A

TRAILER USE CHARGES

<u>DESCRIPTION OF EQUIPMENT</u>	<u>DAILY RATE</u>
Trailers 40' in length	\$ 7.50
Trailers 45' in length 96" wide, 96" undercarriage	\$ 9.50
Trailers 45' in length 102" wide, 96" undercarriage	\$ 9.75
Trailers 45' in length 102" wide, 110" door, 96" undercarriage	\$10.00
Trailers 48' in length 102" wide, 96" undercarriage	\$10.25

APPENDIX B

SETTLEMENT FOR DESTROYED, BADLY DAMAGED OR STOLEN TRAILERS

If it is estimated by handling carrier that cost of complete repairs exceeds the depreciated value less salvage, it shall:

(a) Within 15 days after receipt of depreciated value information from owner, advise owner that it desires to settle for trailer and furnish a list of the major items of damage.

(b) The owner shall advise disposition desired within 10 days after receipt of notification.

(c) If owner requests trailer to be returned home, he shall assume conditioning and loading cost of handling line, not to exceed \$200.00 and all transportation costs except over handling line. The handling carrier in such case shall forward trailer to owner as requested, and shall be credited for the salvage value. Trailers must not be unnecessarily cut up to facilitate handling.

(d) The depreciated values for trailers equals the reproduction cost, less depreciated value.

(i) Reproduction Cost is calculated by multiplying the trailer's original cost by the cost factor (shown below) prior to the year in which the equipment was damaged, and this amount divided by the cost factor for the year the trailer was built. If cost factor has not been provided by the A.A.R. for any specific year of trailer loss, most current factor shall be used and subsequently adjusted when new cost factor is available.

(ii) Depreciated amount is calculated by dividing the reproduction cost by 120 and multiplying this value by the number of complete months in service. The maximum depreciated amount is equal to 90% of the reproduction cost.

(e) Reproduction cost of "stretch" portion of trailer lost or damaged beyond repair shall be calculated by multiplying the original manufactured cost of "stretch" portion by cost factor provided by A.A.R. for year prior to year stretch portion was lost or damaged beyond repair and new cost divided by cost factor provided by A.A.R. for year stretch portion was completed.

(f) The reproduction cost of mechanical refrigeration units with all component parts, including fuel tanks or bottles, shall be computed on current market price, using

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the same 10% per annum rate of depreciation, with maximum depreciated value of trailer. The date of installation will be considered the date built.

(g) Salvage value shall be determined as follows:

(i) All trailers, regardless of type or construction, including all special equipment and accessories, except mechanical refrigeration units, at \$100 per trailer, plus \$60.00 for each tire, regardless of condition of tire.

(ii) Mechanical refrigeration units and all component parts including fuel tanks at \$400.00 per unit.

COST FACTORS:

	<u>YEAR</u>	<u>FACTOR</u>	<u>YEAR</u>	<u>FACTOR</u>
Prior to	1973	100	1981	210
	1973	100	1982	208
	1974	115	1983	208
	1975	130	1984	230
	1976	141	1985	219
	1977	150	1986	206
	1978	166	1987	218
	1979	178	1988	225
	1980	284	1989	232
			1990	284

EXHIBIT D

CP

AGREEMENT FOR THE INTERCHANGE OF TRAILERS ("AGREEMENT")

Agreement dated as of the 15th day June 1991, by and between
WTL RAIL CORPORATION. (WTL) and ~~Canadian Pacific Ltd.~~ (USER)

CANADIAN PACIFIC LIMITED

R E C I T A L S:

1. WTL has leased certain trailers (the "Trailers") bearing those reporting marks listed in the attached appendix.
2. The parties desire to enter into an agreement for the interchange and use by User of the Trailers.
3. The parties desire to establish a set of conditions and charges for the use by User of the Trailers.
4. The parties acknowledge that the Trailers may require repair or servicing or may be damaged or destroyed, while in User's possession.
5. The parties desire to enter into an agreement for the service, repair and compensation of damaged or destroyed Trailers.

NOW, THEREFORE, the parties agree as follows:

A. Definitions

Trailer -A Trailer or container mounted and secured on a chassis.

Trailer Owner - For the sole purpose of the agreement, the Trailer Owner shall be WTL.

Trailer and Container Service and Reporting Rules (hereinafter referred to as the "AAR RULES") - The AAR Rules in effect as of the date of this Agreement, and all future amendments or revisions thereto.

The Association of American Railroads TOFC/COFC Interchange Rules, Governing the Interchange of Repairs to, and Settlement for Trailers and Containers Used in Trailer/-Container-on-Flatcar TOFC/COFC Service (hereinafter referred to as the "INTERCHANGE RULES") - The Interchange rules in effect as of the date of this Agreement, and all future amendments or revisions thereto.

Handling Carrier - Refers to User when User is considered to have handling carrier responsibility as set forth in the AAR Rules and Interchange Rules.

Home - A designated location and or subscriber road accepting empty Owner Trailers when not in use by User.

Use Agreement - An independently negotiated interchange and use agreement between WTL and a User Carrier.

Other Definitions - Unless a term is specifically defined herein, said term shall have the meaning supplied by the AAR Rules and Interchange Rules.

B. Governing Rules

Except to the extent modified or supplemented herein, the use and Interchange by User of the Trailers shall be governed by the AAR Rules and the Interchange Rules.

C. Term

The term of this agreement shall commence and be effective as of June 15, 1991, and shall remain in effect until terminated by either party upon not less than thirty (30) days prior written notice to the other party or until changed by mutual agreement of the parties in writing.

D. Use Rates

1. Effective June 15, 1991, User agrees to pay WTL the applicable charges ("Charges") set forth in the attached Appendix A for use of the Trailers.
2. The Charges hereunder will be increased by a ten percent (10%) penalty if the record of trailer usage is not reported within two months and ten days from the last day of the month in which the trailer was used. Claims not handled within the time limits of Rule 11-T, of the AAR Rules shall become due and payable subject to a twenty percent (20%) penalty upon presentation of a bill by claimant within six (6) months from the date the Charges claimed were incurred.
3. The Charges hereunder ^{are} due and payable within ten (10) days after report of use is made to WTL as outlined in Rule 1-T of the AAR Rules. User will honor drafts drawn by WTL on the banks of User (or will agree to pay WTL by some other mutually acceptable arrangement) for the amount reported by USER as owed to WTL in its monthly use charge report. Failure to comply to the above will result in accounts becoming immediately due and payable and subject to a twenty percent (20%) penalty increase.

4. If User causes or allows a Trailer to be moved to or via a carrier with which WTL has no Use Agreement, User will be responsible to WTL for the Charges hereunder and for any loss, repairs, damage or destruction of the Trailer in accordance with the Interchange Rules until such time as the Trailer returns to Home or to a carrier with whom such party has entered into a Use Agreement with WTL.
5. Upon completing its Use Agreement negotiations with various potential user carriers, WTL agrees to provide User with a list of carriers with whom WTL has entered into a Use Agreement with, designation of Home and series and dimensions of Trailers. Said list will become a part of this agreement as Appendix B.

E. Subscribers

each

WTL and USER/warrants that it subscribes to the AAR Rules and the Interchange Rules.

F. Destroyed, Badly Damaged, or Stolen Trailers

1. Should a Trailer be destroyed, badly damaged (to the extent repair cost exceed Depreciated Value), as hereinafter defined, stolen or missing and last reported on User's line, WTL shall be compensated on the basis of Reproduction Cost (as hereinafter defined) plus costs of Special Equipment or accessories less Depreciated Cost (as hereinafter defined) which equals depreciated value.
 - a. Reproduction Cost shall be: The Trailer's original cost multiplied by the AAR Cost Factor for the year immediately preceding the year in which the Trailer was destroyed, and divided by the AAR Cost Factor (hereinafter defined) for the year the Trailer was built.
 - b. Depreciated Cost is calculated by dividing the Reproduction Cost by 144 and multiplying this value by the number of complete months in service. The maximum Depreciated Cost is 90% of the Reproduction Cost.
 - c. AAR Cost Factors are:
1985-219, 1986-206, 1987-218, 1988-225, 1989-232, 1990-284.

These Cost Factors shall be subject to revisions published by the AAR Interchange Rules Committee.
 - d. A Trailer shall be considered destroyed when the estimated cost of complete repairs exceeds the Depreciated Value.
 - e. Upon notification to WTL from User that a Trailer has been destroyed, WTL shall issue to User a Depreciated Value Statement as outlined in Exhibit A attached hereto.

If it is estimated by the Handling Carrier that the cost of complete repairs will exceed the Depreciated Value, the following procedure shall apply:

- a. The Handling Carrier shall notify WTL of major items of damage and estimated repair cost and request disposition for the Trailer within 15 days after receipt of the Depreciated Value Statement;
- b. WTL shall advise the disposition desired within ten (10) days after receipt of request for disposition.

In the event WTL request that the destroyed Trailer be returned home or another location, WTL shall assume the conditioning and loading costs of the Handling Carrier up to \$200.00, and shall assume all transportation cost except for those transportation costs incurred on the Handling Carrier's line. In such event the handling Carrier shall pay to WTL the Depreciated Value of the Trailer less Salvage Value (as hereinafter defined). In the event WTL does not request that the destroyed Trailer be returned home or to another location, the Handling Carrier shall pay to WTL the full Depreciated Value of the Trailer. Trailers shall not be cut up unnecessarily to facilitate handling. Salvage Value for Trailers shall be \$524.00, with \$53.00 being applied per wheel and \$100.00 being applied for the box.

G. Repairs

1. To the extent WTL designated Maintenance Services ("WTL Repair Agents") mobile units are operated in a reasonably accessible vicinity, the Handling Carrier shall have WTL Repair Agents perform owner repairs (including tire work) and services to the Trailers. In the event that the Handling Carrier is unable to use WTL Repair Agents for reasons beyond its control, the Trailers may be repaired by the Handling Carrier or another repair company ("Other Repair Companies"). In no event shall the total cost of repairs exceed three hundred dollars (\$300.00) without the prior approval of WTL.
2. In the event the Handling Carrier performs owner repairs and services on the Trailers in accordance with Sections F and G of this Agreement, the labor rate charged shall not exceed \$25.50 per hour and parts shall be billed on an invoice cost basis. All invoices shall indicate the labor, including quarter hour increments, and may include a fifteen percent (15%) of total invoice charge for material to cover handling expense.
3. Parts for Trailer servicing, repairs and tire repairs shall be billed on an invoice cost basis. User may not bill WTL for parts or service in excess of that which User pays for

"B" Between WTL and RAILROADS

identical or similar parts and services. All repair bills shall be supported by actual shop invoices. Both parties agree that WTL may protest any unreasonable bill or improper owner's service or repair and shall not be responsible for the cost of same.

H. Indemnification

User shall be responsible for the safety and condition of the Trailers while in its possession or under its control, User agrees to indemnify and hold WTL, its employees and agents, harmless from and against any and all liability or loss (including reasonable attorney's fees) in connection with any personal injury or property damage arising out of or incident to the use, possession or control of the Trailers by User.

I. Correspondence and Payments

User shall direct all payments, correspondence and required reports to R.M. Lombardo c/o WTL Rail Corporation, P.O. Box 522, Blue Island, IL 60406.

J. Conflicting Provisions

In the event provisions of this Agreement should differ from the AAR Rules and the Interchange Rules, This Agreement shall take precedence.

K. Entire Agreement

This Agreement and the AAR Rules and the Interchange Rules, as modified, shall constitute the entire understanding between the parties. This Agreement may only be amended or supplemented by a written agreement executed by the parties.

L. Confidential Information

This Agreement in its entirety shall be held in strictest confidence by both parties.

IN WITNESS WHEREOF:

WTL RAIL CORPORATION

By: R.M. Lombardo

Title: President

Date: 7-29-91

CANADIAN PACIFIC LIMITED
~~CANADIAN PACIFIC LTD.~~

By: W. H. H. H.

General Manager

INTERMODAL OPERATIONS
Title: _____

Date: July 22/91

APPENDIX A

WTL RAIL CORPORATION

WTLZ TRAILERS

DIMENSIONS AND USE CHARGES (PER DAY)

AGE	: 45'x 96"	: 45'x 102"	: 45'x 102" ,:	48'x 102":
	: GEN SERV	: GEN SERV	: 110" DOOR	: GEN SERV :
0 YR	-----	\$ 10.50	\$ 10.75	\$ 11.75
1-3 YRS	\$ 9.75	\$ 10.25	\$ 10.50	\$ 11.50
4-7 YRS	\$ 9.50	\$ 10.00	\$ 10.25	\$ 11.25
8-9 YRS	\$ 8.50	\$ 9.00	\$ 9.25	\$ 10.25
10 YRS & OLDER	\$ 6.50	\$ 7.00	\$ 7.25	\$ 8.25

F: RATES

EXHIBIT A

DEPRECIATED VALUE STATEMENT

TRAILER NO.:

YEAR BUILT: _____ FACTOR: _____ \$ _____

ORIGINAL COST:

YEAR DESTROYED: _____ PRIOR YEAR FACTOR: _____

\$ _____ X _____ = _____

REPRODUCTION COST OF TRAILER: \$ _____

DEPRECIATION:

YEARS: _____ MONTHS _____

AT _____ % PER YEAR = _____ % \$ (_____)

DEPRECIATED VALUE OF TRAILER: \$ _____

BETTERMENTS

YEAR BUILT: _____ FACTOR: _____ \$ _____

YEAR DESTROYED: _____ PRIOR YEAR FACTOR: _____

\$ _____ X _____ = _____

REPRODUCTION COST OF STRETCH: \$ _____

DEPRECIATION:

YEARS: _____ MONTHS _____

AT _____ % PER YEAR = _____ % \$ _____

DEPRECIATED VALUE OF STRETCH: \$ _____

DEPRECIATED VALUE OF TRAILER AND BETTERMENTS
(DEPRECIATED VALUE OF TRAILER + DEPRECIATED
VALUE OF BETTERMENTS

\$ _____

EXHIBIT E

AGREEMENT FOR THE INTERCHANGE OF TRAILERS ("AGREEMENT")

Agreement dated as of the 1st day August, 2002 by and between WTL RAIL CORPORATION. (WTL) and KANSAS CITY SOUTHERN RAILROAD (USER).

RECITALS:

1. WTL owns certain trailers (the "Trailers") bearing those reporting marks listed in the attached Appendix A.
2. The parties desire to enter into an agreement for the interchange and use by User of the Trailers.
3. The parties desire to establish a set of conditions and charges for the use by User of the Trailers.
4. The parties acknowledge that the Trailers may require repair or servicing or may be damaged or destroyed, while in User's possession.
5. The parties desire to enter into an agreement for the service, repair and compensation of damaged or destroyed Trailers.

NOW, THEREFORE, the parties agree as follows:

A. Definitions

Trailer-A Trailer or container mounted and secured on a chassis.

Trailer Owner-For the sole purpose of the agreement, the Trailer Owner shall be WTL.

Trailer and Container Service and Reporting Rules (hereinafter referred to as the "AAR RULES")-The AAR Rules in effect as of the date of this Agreement, and all future amendments or revisions thereto.

The Association of American Railroads TOFC/COFC Interchange Rules, Governing the Interchange of Repairs to, and Settlement for Trailers and Containers Used in Trailer/-Container-on-Flatcar TOFC/COFC Service (hereinafter referred to as the "INTERCHANGE RULES")-The Interchange rules in effect as of the date of this Agreement, and all future amendments or revisions thereto.

Handling Carrier-Refers to User when User is considered to have handling carrier responsibility as set forth in the AAR Rules and Interchange Rules.

Home-A designated location and or subscriber road accepting empty Owner Trailers when not in use by User.

Use Agreement-An independently negotiated interchange and use agreement between WTL and a User Carrier.

Other Definitions-Unless a term is specifically defined herein, said term shall have the meaning supplied by the AAR Rules and Interchange Rules.

B. Governing Rules

Except to the extent modified or supplemented herein, the use and Interchange by User of the Trailers shall be governed by the AAR Rules and the Interchange Rules.

C. Term

The term of this agreement shall commence and be effective as of August 1, 2002, and shall remain in effect until terminated by either party upon not less than thirty (30) days prior written notice to the other party or until changed by mutual agreement of the parties in writing.

D. Use Rates

1. Effective August 1, 2002, User agrees to pay WTL the applicable charges ("Charges") set forth in the attached Appendix A for use of the Trailers.
2. The Charges hereunder will be increased by a ten percent (10%) penalty if the record of trailer usage is not reported within two months and ten days from the last day of the month in which the trailer was used. Claims not handled within the time limits of Rule 11-T, of the AAR Rules shall become due and payable subject to a twenty percent (20%) penalty upon presentation of a bill by claimant within six (6) months from the date the Charges claimed were incurred.
3. The Charges hereunder are due and payable within thirty (30) days after report of use is made to WTL as outlined in Rule 1-T of the AAR Rules. Failure to comply to the above will result in accounts becoming due and payable and subject to a ten percent (10%) penalty increase.
4. If User cause or allows a Trailer to be moved to or via a highway carrier in Canada, Mexico or the U.S. while the trailer is under the User responsibility, User will be responsible to WTL for the charges hereunder and for any loss, repairs, damage or destruction of the Trailer in accordance with the Interchange Rules until such time as the Trailer returns Home or to a carrier with whom such party has entered into a Use Agreement with WTL.
5. WTL has Use Agreements with all U.S. Class 1 railroads, CN, CPRS, TM, TFM, IAIS, FEC, ALM, TMT, TOTE and all their affiliate operating companies.

E. Subscribers

WTL and USER warrant that it subscribes to the AAR Rules and the Interchange Rules.

F. Destroyed, Badly Damaged, or Stolen Trailers

1. Should a Trailer be destroyed, badly damaged (to the extent repair cost exceed Depreciation Value), as hereinafter defined, stolen or missing and last reported on User's line, WTL shall be compensated on the basis of Reproduction Cost (as hereinafter defined) plus costs of Special Equipment or accessories less Depreciated Cost (as hereinafter defined) which equals depreciated value.
 - a. Reproduction Cost shall be: The Trailer's original cost multiplied by the AAR Cost Factor for the year immediately preceding the year in which the Trailer was destroyed, and divided by the AAR Cost Factor (hereinafter defined) for the year the Trailer was built.
 - b. Depreciated Cost is calculated by dividing the Reproduction Cost by 144 and multiplying this value by the number of complete months in service. The maximum Depreciated Cost is 90% of the Reproduction Cost.

c. AAR Cost Factors are:

These Cost Factors shall be subject to revisions published by the AAR Interchange Rules Committee.

- d. A Trailer shall be considered destroyed when the estimated cost of complete repairs exceeds the Depreciated Value.
- e. Upon notification to WTL from User that a Trailer has been destroyed, WTL shall issue to User a Depreciated Value Statement as outlined in Exhibit A attached hereto.

If it is estimated by the Handling Carrier that the cost of complete repairs will exceed the Depreciated Value, the following procedure shall apply:

- a. The Handling Carrier shall notify WTL of major items of damage and estimated repair cost and request disposition for the Trailer within 15 days after receipt of the Depreciated Value Statement;
- b. WTL shall advise the disposition desired within ten (10) days after receipt of request for disposition.

In the event WTL request that the destroyed Trailer be returned home or another location, WTL shall assume the conditioning and loading costs of the Handling Carrier up to \$200.00, and shall assume all transportation cost except for those transportation costs incurred on the Handling Carrier's line. In such event the handling Carrier shall pay to WTL the Depreciated Value of the Trailer, less Salvage Value (as hereinafter defined). In the event WTL does not request that the destroyed Trailer be returned home or another location, the Handling Carrier shall pay to WTL the full Depreciated Value of the Trailer. Trailers shall not be cut up unnecessarily to facilitate handling. Salvage Value for Trailers shall be \$524.00, with \$53.00 being applied per wheel and \$100.00 being applied for the box.

G. Repairs

1. In the event the Handling Carrier performs owner repairs and services on the Trailers in accordance with Sections F and G of this Agreement, the labor rate charged shall not exceed \$30.00 per hour and parts shall be billed on an invoice cost basis. All invoices shall indicate the labor, including quarter hour increments, and may include a fifteen percent (15%) of total invoice charge for material to cover handling expense.
2. Parts for Trailer servicing, repairs and tire repairs shall be billed on an invoice cost basis. User may not bill WTL for parts or service in excess of that which User pays for identical or similar parts and services. Upon request, all repair bills shall be supported by actual shop invoices. Both parties agree that WTL may protest any unreasonable bill or improper owner service or repair and shall not be responsible for the cost of same. No invoice shall exceed \$450.00 with prior authorization from WTL.

H. Indemnification

User shall be responsible for the safety and condition of the Trailers while in its possession or under its control, User agrees to indemnify and hold WTL, its employees and agents, harmless from and against any and all liability or loss (including reasonable attorney's fees) in connection with any personal injury or property damage arising out of or incident to the use, possession or control of the Trailers by User.

I. Correspondence and Payments

User shall direct all payments, correspondence and required reports to R.M. Lombardo c/o WTL Rail Corporation, P.O. Box 720, Palos Heights, IL 60463.

J. Conflicting Provisions

In the event provisions of this Agreement should differ from the AAR Rules and the Interchange Rules, This Agreement shall take precedence.

K. Entire Agreement

This Agreement and the AAR Rules and the Interchange Rules, as modified, shall constitute the entire understanding between the parties. This Agreement may only be amended or supplemented by a written agreement executed by the parties.

L. Confidential Information

This Agreement in its entirety shall be held in strictest confidence by both parties.

IN WITNESS WHEREOF:

WTL RAIL CORPORATION

By: R.M. Lombardo

Title: President

Date: 7-12-02

KANSAS CITY SOUTHERN RAILROAD

By: Stephen E. Ray

Title: Sr. Mgr. Term. Operations

Date: 7-29-02

APPENDIX A

WTL RAIL CORPORATION

WTLZ TRAILERS

DIMENSIONS AND USE CHARGES (PER DAY)

48' X 102"	\$10.50
------------	---------

53' X 102"	\$13.50:
------------	----------

EXHIBIT A

DEPRECIATED VALUE STATEMENT

A. Owners Original Cost	_____	
B. Cost Factor ____ for yr acquired	_____	
C. Cost Factor ____ for yr prior to loss ____	_____	
D. Base Reproduction Cost	_____	
E. Retirement Value @10%	_____	_____
F. Depreciation Base @90%	_____	
G. Less Depreciation	_____	
H. Adjusted Base F minus G	_____	_____
I. Settlement Value E plus H	_____	



www.wttrail.com

P.O. Box 325, Palos Heights, IL 60463

Ph: 708-448-9856 Fax: 708-448-9851

March 22, 2001

File:useTexMex

Mr. Carlos Garcia
Texas Mexican Railway Co.
P.O. Box 419
Laredo, TX 78042-0419

Dear Mr. Garcia:

Pursuant to Interstate Commerce Commission decision regarding the exempt status of TOFC/COFC equipment (Ex Parte 230, Sub. No. 5), it is necessary to establish agreement with your Company for both trailer interchange and compensation, to be effective commencing January 1, 2000.

Effective January 1, 2000 ²⁰⁰¹ WTL RAIL - INTERMODAL charges for use of its trailers while on your line will be as shown on Appendix "A" attached hereto, for trailers bearing reporting marks of WTLZ ownership, in accordance with the AAR "Code of Trailer and Container Service Reporting Rules".

It is mutually agreed to effect trailer servicing and repairing when required under the AAR TOFC/COFC Interchange Rules, according to the standards set forth in those rules. All bills for service and repair shall be reasonable.

Should a dispute arise over whether or not a bill is reasonable, whether or not service or repair has been performed unnecessarily or improperly, it is mutually agreed to use our best efforts to resolve the disagreement.

Should a trailer be destroyed, badly damaged (to the extent repair costs exceed depreciated value) or stolen the owner shall be compensated on the basis of its Reproduction cost and any special equipment or accessories, less depreciation. Reproduction cost shall be the owners original cost new or used computed against the AAR Interchange Rules Committee's costs factor for the year prior to the year destroyed, divided by the cost factor for the year in which the trailer was purchased. Depreciated value shall be calculated by amortizing 85% of the reproduction cost over a 168 month useful life term.

*x per phone conversation w/ Rick Lombardo on 7/17/01
Cathy*

Rates will be increased by a ten (10) percent penalty if the record of trailer usage is not reported within two months and ten days from the last day of the month in which it was used. Claims not handled within the time limits of Rule 11-T of the AAR "Trailer and Container Reporting Rules" will become due and payable subject to double penalty.

Except to the extent modified herein, trailer and container interchange shall be governed by the AAR "Code of Trailer and Container Service and Reporting Rules" and "TOFC/COFC Interchange Rules".

This agreement will remain in effect until terminated by either party by the giving of a minimum of thirty (30) days' notice, or until changed by mutual agreement.

Please acknowledge your concurrence with these terms, on the attached copy of this letter, by affixing your signature in the space provided and returning that copy to me.

Yours very truly,

R. M. Lombardo
President

RML/tdl

Texas Mexican Railway Co.
AGREED:

Manuel Zuluaga
Signature

General Manager
Title

07/24/01
Date

Cal Dan - AVP inter modal/automotive
7/25/01

APPENDIX A

WTL RAIL CORPORATION

TRAILER USE CHARGES

"WTLZ"

DESCRIPTION OF EQUIPMENT

DAILY RATE

TRAILERS 48' x 102" WIDE

\$11.00

TRAILERS 53' x 102" WIDE

\$13.00

EXHIBIT F-1

[Home](#) ; [iPower](#) ; [Markets](#) ; [Prices](#) ; [Products & Services](#)

MarketingNews

Customer Updates Home

Customer Updates are designed to inform BNSF customers of new developments or changes relating to BNSF products, services, tools, prices or facilities.

To: **BNSF Intermodal Customers**

04/18/2005

Rail-Controlled Trailer Transition Plan

As you are aware, the domestic intermodal equipment marketplace has changed vastly over the past five years. More and more door-to-door intermodal providers are using their own equipment. This trend is good for shippers as it provides them more flexibility and also good for BNSF as it keeps our facilities fluid.

As we transition out of managing rail trailers, we can focus more on our core business—providing line-haul services—rather than providing rail-controlled intermodal equipment management.

Trailer Transition Plan

Therefore, BNSF is planning to transition back to the equipment leasing companies the rail-controlled trailers on its network, and will no longer supply empty trailers by the end of the transition period. The transition will occur in phases and will be complete by mid-2005.

Effective with the dates below, trailers with the following marks will be considered private and will be able to move on BNSF or with proper revenue billing:

- Effective May 18, 2005: BMDZ and WTLZ marked trailers.
- Effective June 18, 2005: REDZ marked trailers.
- Effective July 15, 2005: REAZ and RXXZ marked trailers.

Retirement of SFTZ Trailers

In addition, BNSF is in the process of retiring its SFTZ 45-foot trailers, series **SFTZ 230000 through 230999**. If you have any empty trailers in this series in your possession, *please do not reload them*, and at your earliest convenience, return them to the nearest BNSF Intermodal Facility.

Your business is important to BNSF. We hope that you understand and appreciate the need to focus our resources on keeping our network fluid in order to handle the increasingly larger volumes on our network.

If you have questions regarding these changes, please contact Pete Riis at 817-867-6484 or send an email to Pete.Riis@bnsf.com.

If you have any questions, please send an email to customerinterface@bnsf.com

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[Site Terms of Use](#)

EXHIBIT F-2

BNSF

Edward Zajac
Assistant Vice President
Intermodal/Automobile Equipment

The Burlington Northern
and Santa Fe Railway Company

P.O. Box 961056
Fort Worth, TX 76161-0056
2650 Lou Menk Drive, 1st Floor
Fort Worth, TX 76131-2830
(817) 867-6493
(817) 352-7198 Fax

April 15, 2005

Mr. Richard M. Lombardo
President
WTL Rail Corporation - Intermodal
P.O. Box 325
Palos Heights, IL 60463
Facsimile No. (708) 448-9851

Dear Rich:

Please accept this letter as official notice that effective May 18, 2005, BNSF Railway Company formerly known as The Burlington Northern and Santa Fe Railway Company ("BNSF") will, pursuant to Section 10, terminate the Equipment Use Agreement dated September 1, 2000, along with Schedule No. 1 dated January 19, 2001, covering various 48' trailers with the SFTZ and WTLZ marks.

Thank you for your assistance in this matter.

Yours very truly,

Edward Zajac

Cc: Messrs. F. A. Anderson
P. K. Riis
B. Burnett
Ms. L. Surin

EXHIBIT G

KICH -

708-448-5851



NORFOLK SOUTHERN **Intermodal News**

April 20, 2005
Volume 2005-043
Page 1 of 1

World Wide Web:
www.nscorp.com/intermodal

For rate requests,
please contact your
local NS Intermodal
Account Manager or
email:
imprice@nscorp.com

Requests for matrix
pages:
eprice@nscorp.com

NS EMP/NACS
reservations, rates, and
service:
www.rez1.com
www.nacsfirst.com

Rail-Controlled Trailer Changes

The current Intermodal market place dictates that NS make changes to the structure of our agreements to handle rail-controlled trailers.

Trailers bearing the marks listed below shipped on the NS or received in interchange from another railroad (either in-the-gate or steel-wheel interchange) after the effective date of the change will be treated as private trailers. Private trailer (service code 65) rates will apply. Empty trailers bearing these marks shipped on NS after the effective date will require revenue billing.

- BMDZ and WTLZ – effective May 20, 2005
- REDZ – effective June 18, 2005
- REAZ and RXXZ – effective July 15, 2005

In addition, the BNSF is retiring 45' SFTZ trailers in the series from 230000 to 230999. If you have any empty trailers in this series in your possession, please return them to the nearest BNSF Intermodal facility.

If you need any further information or have questions regarding this announcement, please contact your NS Intermodal sales representative.

SFTZ's

ARE 1994

1995

EXHIBIT H

John P. Smith
Director - Intermodal Assets
Premium Operations



1400 Douglas Street
STOP 1160
Omaha, NE 68179-1160
Phone: (402) 544-3684
Fax: (402) 501-0462
E-mail: jpsmith@up.com

April 20, 2005

Richard Lombardo
General Manager, WTL Rail Corporation
P.O. Box 325
Palos Heights, IL 60463

Dear Mr. Lombardo:

Please be advised that effective May 21, 2005, the Union Pacific will cancel the trailer use agreement between the Union Pacific Railroad and WTL Rail for WTLZ marked rail trailers. Any WTLZ trailers received as loads in interchange from other railroads or as in-gates at UP Intermodal facilities subsequent to that date shall be considered as private equipment. UP will pay neither use nor per diem charges while in its possession. Furthermore, with cancellation any empty WTLZ trailers will require revenue billing prior to in-gate at UP Intermodal facilities.

Sincerely,

John P. Smith

A handwritten signature in black ink, appearing to read "John P. Smith", is written over the typed name.

Director, Intermodal Assets

Union Pacific Railroad

EXHIBIT I

Subj: **Cancellation of Per Diem Trailer Use Agreements With Canadian Pacific Railway (April 25, 2005)**
Date: 4/25/2005 10:47:18 AM Central Standard Time
From: Mike_Leveille@cpr.ca
To: 'adam.l.rodery@kcsr.com'; 'mdmoble@feci.com'; Randy.Brink@exchange.nscorp.com, Jim.Pinson@nscorp.com, George_Jones@csx.com, joe.mcclure@kcsr.com, mbcarmic@up.com, mike.partica@cn.ca, Daniel.sanders@bnsf.com, WTLRAIL@AOL.COM, michael.j.smith@kcsr.com, melombard@xtra.com, jlucas@feci.com, emoffett@vermontrailway.com, linda.wertz@bnsf.com, kelley-jo.hancock@gbrx.com, kbsroffice@kbsrailroad.com, Ross.Pignaz@ge.com, david.whyman@cn.ca
CC: pvdean@nscorp.com, lrfabits@nscorp.com, Einar.Markussen@gecapital.com, EDDIEA@Railcarmgt.com, jpsmith@up.com

To who it may concern,

Please be advised that effective immediately or as per contract agreement termination notice, the trailer use agreements between Canadian Pacific Railway and all per diem trailer owners are being cancelled. Any per diem trailers received in interchange subsequent to the above dates shall be considered as private equipment and CP will pay neither use nor per diem charges while in its possession. Furthermore, all empty per diem trailers will require revenue billing prior to ingate at any CP Terminal. Please ensure this cancellation notice is forwarded to all appropriate personnel in your organization.

Thanks
Mike Leveille
Intermodal Cube Planner
Canadian Pacific Railway
1290 Central Parkway W, Suite 600
Mississauga, ON
L5C 4R3

Tel. 905-803-3237
Fax 905-803-3300

EXHIBIT J

KANSAS CITY SOUTHERN

427 WEST 12TH STREET • KANSAS CITY, MISSOURI 64105



FOUNDED 1887

April 18, 2005

R.M. Lombardo
P.O. Box 325
Palos Heights, IL 60463

RE: WTL Rail Trailer Agreement

Dear Mr. Lombardo,

Please consider this letter as the Texas Mexican Railway Company, and the Kansas City Southern Railway's acknowledgement that effective May 18, 2005 we will terminate our interchange agreement with WTL Intermodal. Under the WTL agreement, both railroads must submit in writing a 30-day notice if the agreements are to be canceled by either party.

Please provide turn-in locations for units that are on either TexMex or KCS' lines at the time of expiration of the above-mentioned agreements by May 25, 2005.

Sincerely,

Adam Rodery
Manager Intermodal Measurements
Kansas City Southern Railway

SAN ANDREAS FAST FORWARDING, INC.

P.O. BOX 69100, TUCSON, ARIZONA 85737-0010 (520) 544-9560 FAX (520) 544-9553

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

May 2, 2005

IN THE MATTER OF
WTL RAIL CORPORATION
PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

My name is Stephen F. Baca. I am president and principal shareholder of San Andreas Fast Forwarding, Incorporated ("San Andreas"), a company that specializes in intermodal transportation of fresh produce (primarily onions) in rail-controlled van trailers, non-refrigerated. I have held this position since 1988. I was formerly employed by Santa Fe Railway from 1953 to 1979, my last position there being Manager of Market Research and Development. From 1979 to 1988 I founded and/or managed several intermodal marketing companies specializing in the transportation of fresh produce from Western growing areas to Eastern and Midwestern markets in the same traffic lanes that San Andreas Fast Forwarding now operates.

San Andreas offers a door-to-door intermodal transportation service for onions grown seasonally in New Mexico, Arizona, California, Oregon, Washington, Idaho and Utah, and operates under terminal to terminal rail rates that include railroad provided or controlled trailers. Being a perishable item, onions require fast and timely transportation. Although some onion traffic moves in refrigerated rail boxcar service, which is slow but cost effective compared to highway or intermodal service, we compete

Page Two

mainly with highway carriers. The need for our service, and that of other transportation companies similarly situation, typically increases as highway service costs go up and availability of highway equipment becomes scarce. Produce shippers, in general, anticipate a serious shortage in their ability to get their products to market this year. As fuel costs continue their upward climb, more and more truckers cease operations due to their inability to recoup these higher costs. Add to this higher insurance costs plus the human factor of having to increase driver pay for a shrinking supply of qualified drivers and it is clear that the produce industry is in a world of hurt. The stress of low transportation capacity is more hurtful to produce shippers because their product is perishable and transportation is not postpone-able as it is with so-called dry freight. In years past, San Andreas and others have filled this motor carrier transportation supply gap.

From time-to-time we have tried railroad container service, but have found it to be too slow and unpredictable. From California shipping points to New York, for example, railroad trailer service is typically five days, while container service takes seven to eight days. The normal interchange point between western and eastern railroads is Chicago. More often than not, our trailer loads move on the same trains with containers in and out of Chicago so that train transit times are identical for both modes. The service difference lies in the terminal times at Chicago, where containers must be matched up with a suitable chassis, or rail interchanged, while trailers, once grounded, move freely to the connecting railroad over the road — a much smoother transition. A less prone problem with containers, but still aggravating, is delay times at the destination railroad terminals

Page Three

where containers must once again be matched with the right chassis. This container problem is no secret. It has existed for years, yet the railroads seem disinclined to find a solution. Instead, they want to tax the system by promoting more containers and less trailers. It is a fact that where railroad terminal congestion exists it is mainly because of containers, not trailers.

The action of the BNSF (followed by other Class I railroads) in relinquishing its responsibility for providing common carrier service in railroad-controlled trailers will be devastating to San Andreas' business and will pose a serious threat to the livelihood of onion growers and shippers throughout the western growing areas. The onion shipping season generally starts in Arizona and Southern California in May, shifts to Northern California in June and July, then moves to the Northwest starting in August. From our viewpoint, BNSF could not have picked a worse time to implement its trailer subsidence program coming as it is just as we begin the new shipping season. The few weeks of notice we were given is far too short given the enormous impact of the service curtailment and the limited options available to small shippers such as San Andreas.

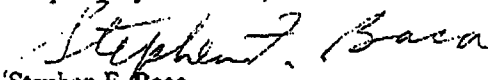
Another problem we face with diminution of the railroad trailer pool is that onions require ventilation – they do not travel well in an enclosed environment – nor do they travel well under refrigeration. Trailer owners, such as WTL, have allowed us to install vents at our expense to facilitate the ventilation needs of onion transportation. The railroads have not seen fit to either allow us to vent their containers or to provide vented

Page Four

containers. The only exception is CSX who have a small fleet of vented containers – not nearly enough to serve the vast needs of onion shippers. Annual fresh onion production in the United States, predominantly originating in the western states, is 120 to 126 million 50# bags – roughly equal to 140,000 to 148,000 truckloads. In the agricultural arena, onion production in this nation is outranked only by potatoes and lettuce.

Reduction and ultimately elimination of the railroad-controlled trailer fleet will have dire consequences not only for third party marketing companies such ourselves, but for all onion shipper who will lose a valuable transportation alternative, leaving them captive to an ever declining fleet of highway carriers. The action by BNSF et al in attempting to eliminate trailer service demonstrates a disregard for its common carrier responsibilities contrary to the public interest. We and onion shippers at large will suffer irreparable harm in the absence of the relief sought in the WTL petition. There is a compelling need for the continuance of railroad trailer service. The railroads should be required to maintain trailer service at satisfactory levels, and since they are disinclined to invest in this equipment, they should be compelled to provide just and reasonable compensation to those who do provide such equipment.

Respectfully submitted,


Stephen F. Baca
President

CC: Richard M. Lombardo
WTL Rail Corporation
P. O. Box 325
Palos Heights, IL 60463

Alliance Shippers Inc.OO OO 15515 S. 70th Ct * Orland Park, IL 60462 * 708-802-7517 * Fax 708-802-5253

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423

April 30, 2005

RE: Petition of WTL Rail Corporation for Declaratory Order Concerning Certain Practices of Railroads
with Respect to Intermodal Trailers.

Dear Secretary Williams:

I am Larry W. Henry, Vice President Logistics and Special Projects, for Alliance Shippers, Inc.

Alliance Shippers, Inc. is a worldwide provider of transportation services to a customer list with broad based transportation and distribution needs. Our combined annual sales of our services exceeded \$700 million dollars in 2004 as a result of our use of products currently provided by rail-truck-water and air carriers including but not limited to loading of International and Domestic container and trailer vehicles.

A significant portion of our Domestic rail Intermodal truckload business shows a distinct preference for a trailer as opposed to a 48 or 53' double stack container. Over-all, levels of service continue to be somewhat better in a rail trailer VS rail double stack containers; and some commodities simply prefer trailers.

A chain reaction by several Class I railroads appears to be occurring in response to that of the recent BNSF's notice that certain series of railroad owned or trip leased trailers will in the short future no longer be accepted on their railroad unless designated as a private unit. These other Carriers are now making similar announcements to avoid being placed in the position of holding trailers without the traditionally accepted means of interchanging and home routing these units.

It is estimated by some that 30,000 trailers containing certain markings will be effectively eliminated as a resource for loading by our customers which will place further pressure on an Intermodal infrastructure that has already shown capacity constraints pre-loss of the trailer resource.

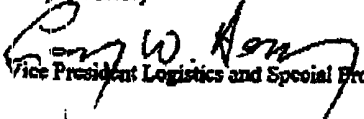
With peak season fast approaching and no known quantity of rail equipment to substitute for these lost trailers, we fear immediate harm to our customers as they are forced over-the-road at higher costs; and to our nation, in the form of increased fuel consumption and further congestion of our streets and highways.

Additionally, we may see loss of business as we are primarily reliant on the use of rail Intermodal owned equipment to service our shippers and do not see a like quantity of substitute equipment types being offered by the railroads that are restricting rail trailers on their lines.

There is a compelling need for the continuance of railroad owned or leased trailer service. Containers do not fulfill the needs of all Intermodal shippers, nor are there likely to be sufficient quantities to do so as a direct placement for the 30,000 some odd trailers that are at stake here. Loss of these trailers places an estimated 648,000 more loads at risk of being added to our highways. Our country is already short on fuel, short on drivers, and long on road congestion.

Respectfully submitted for your consideration,

Larry W. Henry


Vice President Logistics and Special Projects

Alfonso shippers inc
00 00

15515 S. 70th Ct. * Orland Park, IL 60462 * 708-802-7517 * Fax 708-802-5253

April 30, 2005

Fax To: Rich Lombardo

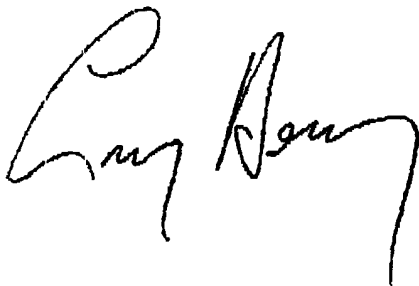
Fax # : 708-448-9851

Number of copies including cover memo: 2

From: Larry Henry

Subject: Support Letter

Please see attached, as requested.

A handwritten signature in black ink, appearing to read "Larry Henry". The signature is written in a cursive, flowing style with a large initial "L" and a long, sweeping tail.

FMC-F-No. 145
Cancels FMC-F-No.144

THE OFFICIAL INTERMODAL EQUIPMENT REGISTER®

**CONTAINERS, TRAILERS,
CHASSIS AND BOGIES
IN INTERMODAL SERVICE**

MARCH 2005

Vol. 37, No. 2

ISSUED MARCH 10, 2005

EFFECTIVE MARCH 20, 2005

Filed upon ten days' notice, and 49 CFR 1312.4 (e) (1) (ii) waived;
Surface Transportation Board Special Tariff Authority No. 81-6440 (Amendment No. 1)

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THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

E-5

TRAILER AND CONTAINER SERVICE & REPORTING RULES

PREFACE

The Rules contained herein do not foreclose subscribers from entering into other agreements which may be contrary to these rules.

DEFINITIONS

Trailer—A vehicle used in trailer on freight car service constructed for the transport of commodities from point to point via highway, equipped with suitable permanently affixed undercarriage and wheels and with a device for coupling to self-powered tractor for movement.

General Service Trailer—A trailer or container welded to a chassis, when designated by the owner in the AAR UMLER file.

General Service Container—A container mounted and secured on a chassis or bogie, when designated by the owner in the AAR UMLER file.

Container—A unit for transporting commodities in trailer or container on freight car service from point to point, constructed in such a manner that it may be mounted and secured on a car, chassis or bogie for the purpose of such movement.

Chassis-Bogie—A wheel assembly constructed to accept mounting of containers.

TOFC-COFC Service—TOFC Service—Transportation involving the movement of trailers and/or containers mounted on chassis/bogies on freight cars. COFC Service—Transportation involving the movement of containers without chassis/bogies on freight cars.

Owner—The person having title to equipment described herein or entitled to exercise the rights and privileges of title. (Note: A.A.R. assigned reporting marks shall be displayed on the equipment and the person whose reporting marks appear on the equipment shall be deemed to be the owner for the purpose of applying these rules.)

Subscriber—A party signatory to the Trailer and Container Service and Reporting Rules Agreement.

Home Trailer, Container or Chassis—A trailer or container or chassis bearing railroad marks in the possession of the holder of such marks.

Foreign Trailer, Container or Chassis—A trailer, container or chassis bearing railroad reporting marks in the possession of a party other than the holder of such marks.

Home Road—The railroad whose reporting marks are displayed on a particular trailer, container or chassis.

Junction—An agreed location where two or more subscribers interchange trailers, containers or chassis.

Rail Controlled Trailer-Container—A trailer or container for which the handling carrier has use charge responsibility.

Railroad Reporting Marks—Are reporting marks assigned to a railroad by the Secretary, Customer Operations Division, Association of American Railroads.

CODE OF TRAILER & CONTAINER SERVICE RULES

SECTION 1 - TRAILERS

RULE 1-Handling of General Service Trailers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such trailers, empty rail controlled trailers designated as General Service may be loaded without regard to ownership, destination or route unless:

- (a) Ordered home for inspection, maintenance, licensing or such other reason as the owner (lessor) may specify. Under this provision a specific trailer may be ordered home no more than once in any 12-month period.
- (b) Trailers moved empty under (a) may be:
 1. Delivered to home road (direct connection).
 2. Delivered empty to the road from which received under load, at the junction where received.

RULE 1A-Handling of General Service Trailers

Empty rail controlled trailers designated as General Service not handled in accordance with Rule 1 may be:

1. Delivered empty to the home road at any junction.
2. Delivered empty to the road from which received under load, at the junction where received.
3. Delivered empty to any road requesting General Service Trailers at a junction mutually agreed (direct connection), where the delivering carrier has ascertained that the requesting carrier has an agreement with the owner to accept such trailers.

EXCEPTIONS

- (4) A railroad must not deliver an empty trailer bearing its own reporting marks to another railroad unless the receiving railroad has requested equipment consistent with Rule-1-A-3.
- (5) A railroad must deliver an empty trailer to the owner if the city where it was received loaded is the same city that the interchange exists for the empty reverse route authority.
- (6) The receiving carrier may request the dates establishing the reverse route authority from the delivering carrier. The delivering carrier must furnish dates requested within 5 days.

RULE 2-Handling of Non-General Service Trailers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such trailers, empty foreign trailers not designated as General Service shall, unless otherwise mutually agreed, be:

- (a) Loaded to or via home road.
- (b) Loaded in the direction of home road.
- (c) Delivered to home road (direct connection).
- (d) Delivered empty to the road from which received under load, at the junction where received.

RULE 3-Steamship, Ferry, Barge or Air Restrictions

Foreign trailers/containers must not be loaded via or delivered empty to a water carrier for transportation by water or to an air carrier for transportation by air except for transportation in interstate commerce by common carriers between points within the continental United States (not including Alaska and Hawaii) without permission of the owner filed with the A.A.R. Interchange Services Division.

RULE 4-Interchange

Unless otherwise agreed to by roads involved, trailers shall be considered as having been delivered (interchanged):

- (a) When car on which trailer is loaded is placed upon a track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding and delivery and accepted by inspector of receiving road.
- (b) When trailer interchanged by highway is placed in a yard or parking space agreed upon and designated as a point of interchange for such deliveries between carriers, and accompanied or preceded by proper data for forwarding and delivery together with inspection form prescribed in the AAR TOFC/COFC Interchange Rules.
- (c) A receiving carrier refusing an empty trailer moving in highway interchange in compliance with Service Rules 1, 1A and 2 shall be liable to the delivering carrier for cartage expense incurred for each trailer so refused.

NOTE: When possible, the delivering document accompanying empty trailers is to reference the date establishing the reverse route authority.

SECTION 2 - CONTAINERS

RULE 1-Handling of General Service Containers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such containers, empty rail controlled containers designated as General Service may be loaded, without regard to ownership, destination or route, unless:

- (a) Ordered home for inspection, maintenance, licensing or such other reason as the owner (lessor) may specify. Under this provision, a specific container may be ordered home no more than once in any 12-month period.
- (b) Containers on chassis-bogies moved under (a) may be:
 1. Delivered to home road (direct connection).
 2. Delivered empty to the road from which received under load, at the junction where received.

THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

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CIRCULAR NO. OT-5-SERIES

ASSOCIATION OF AMERICAN RAILROADS
Operations and Maintenance Department • Interchange Services Division

Excerpts from Circular No. OT-5-SERIES
**RULES GOVERNING ASSIGNMENT OF REPORTING MARKS
AND MECHANICAL DESIGNATIONS**

III

Other than Railroad Owned or Controlled Trailers (See Note)

(a) All requests for assignment of reporting marks and/or series numbers for equipment contemplated for service other than railroad-owned or controlled trailers must be submitted in writing to the Secretary, Business Services, Association of American Railroads.

(b) Reporting marks will be assigned by the Secretary, Business Services, for use on other than railroad-owned or controlled trailers, providing the applicant subscribes to the AAR Interchange Rules for Trailer-On-Flat-Car (TOFC/COFC) Service. Following assignment, the provisions of section 3 - Reporting Marks and Numbering System, Code of Trailer and Container Service Rules shall be complied with.

(c) Following the assignment of reporting marks and/or series numbers, all trailers must be registered in the Universal Machine Language Equipment Register in the format prescribed in the UMLER Data Specification Manual. These trailers are published in the AAR's Car Hire Master List (micro-fiche). In addition, the owner must register all trailers in The Official Intermodal Equipment Register.

V

Railroad Trailers and Containers

(a) Prior to assignment of reporting marks the applicant must furnish evidence to the Secretary, Business Services confirming that:

- (1) A serviceable TOFC facility located on the applicant railroad is in existence.
- (2) It can accept trailers delivered on flat cars in rail interchange service.

(b) Reporting marks will be assigned by the Secretary, Business Services, for use on all railroad-owned or controlled trailers and containers, providing the applicant subscribes to the AAR Interchange Rules for Trailer-on-Flat-Car (TOFC/COFC) Service and the Code of Trailer and Container Service and Reporting Rules.

(c) Following the assignment of the reporting marks, all trailers and containers must be registered in the Universal Machine Language Equipment Register (UMLER) in the format prescribed in the UMLER Data Specification Manual. These trailers and containers are published in the AAR's Car Hire Master List (micro-fiche). In addition, the owner must register this equipment, and publish the name, address and telephone number of the Trailer Distribution Officer, in The Official Intermodal Equipment Register.

On behalf of the General Committee and the Committee on Compensation.

Respectfully,
J.J. Carroll

RULES FOR REPORTING STANDARD AND NON-STANDARD PRIVATE AND RAILROAD TRAILERS AND CONTAINER REPORTING MARKS AND NUMBERS TO AUTOMATED SYSTEMS

- I. Standard Reporting Marks are comprised of not more than four (4) alphabetical letters. For trailers the last letter is a "Z" and for containers the last letter is a "U".

When a private or railroad unit is stenciled with a non-standard reporting mark or no reporting mark the following guidelines apply:

1. Reporting marks having less than four (4) alphabetic letters, report as stenciled, i.e., report "ABC" not ABCZ or ABCU.
2. Reporting marks having non-alphabetic characters, e.g., ampersands (&), hyphens (-) etc. or numerics, report "ABC" not AB&C or A-BC or AB4C.
3. Reporting marks exceeding four (4) alphabetic letters, report "ABCD" not ABCDE.
4. Reporting marks not stenciled on unit, report "NONZ" for trailers and "NONU" for containers. Do not report PVT, PVTT, FVTZ or PVTU. NONZ and NONU cannot be reported to the UMLER system.

- II. Standard Unit Numbers are comprised of six (6) digits.

When private or railroad units are stenciled with non-standard numbers the following guidelines apply:

1. Units having less than six (6) numerics, e.g., ABCZ 100 or ABCU 100 report: ABCZ 000100 or ABCU 000100.
2. Units having more than six numerics, e.g., ABCZ 1004567 or ABCU 1004567 report the first six (6) numbers, e.g., ABCZ 100456 or ABCU 100456.
3. Special characters, alphabetic letters and/or check digits are not reported, e.g., ABCU 100-456 or ABCU 100-4567 or ABCU 100X456 or ABCU 100-456 7 report: ABCU 100456.

Note: It is recommended that documents from which non-standard reporting marks and numbers are reported be maintained as an audit trail.

TOFC/COFC INTERCHANGE AGREEMENT TRAILER/CONTAINER-ON-FLAT-CAR (TOFC/COFC) SERVICE

Subscriber hereby agrees with each other subscriber hereto, except as other agreements between or among subscribers may provide, by filing a signed counterpart of this agreement with the Secretary, Business Services, Association of American Railroads, to abide by the TOFC/COFC Interchange Rules, as amended from time to time.

This agreement may be canceled by any subscriber on thirty (30) days notice to the Secretary, Business Services, Association of American Railroads.

Dated _____

Subscriber _____

By _____

Title _____

SUBSCRIBERS TO THE INTERCHANGE AGREEMENT

TRAILER/CONTAINER-ON-FLAT-CAR (TOFC/COFC) SERVICE RAILROAD COMPANIES

Amtrak - National Railroad
Passenger Corp.
Angelina & Neches River Railroad
Bangor & Aroostock Railroad Co.
Belfast and Mooshead Lake
Railroad Co.
Boston and Maine Corporation
Burlington Northern and Santa Fe
Ry. Co.
Canadian National Railways
Canadian Pacific Railway
Canton Railroad Company
Cedar River Railroad Company
Chicago, Central and Pacific
Railroad Co.
Clarendon Concord Railroad Corp.
Clarendon and Pittsford Railroad Co.
Columbus & Greenville Railway
Company
Consolidated Rail Corp.
CSX Transportation, Inc.
Dakota, Minnesota & Eastern RR
Delaware and Hudson Railway
Company, Inc.
Delta Valley & Southern Railway Co.
Duluth & Northeastern Railroad Co.
East Erie Commercial Ry.

East St. Louis Junction Railroad
Florida East Coast Railway Co.
Fordyce & Princeton Railroad Co.
Fox Valley & Western Ltd.
Gateway Western Railroad
Grafton & Upton Railroad Co.
Grand Trunk Western Railroad
Incorporated
Great Western Railroad
Hartford and Stoughton Railroad Co.
Illinois Central Railroad Co.
Iowa Interstate Railroad
Kankakee, Deaverville & Southern Ry.
Kansas City Southern Railway Co.
Louisiana & North West Railroad Co.
Maine Central Railroad Co.
Massachusetts Central Railroad Corp.
Middletown and New Jersey Ry.
Minnesota, Dakota & Western Ry. Co.
Missouri & Northern Arkansas
Railroad
New York and Atlantic Railway
Norfolk Southern Railway Company
(Includes Affiliates Per Agreement)
Ontario L'Original Railway, Inc.
Paducah & Louisville Railway, Inc.
Portland Terminal Co.

Providence and Worcester Railroad
Co.
Roscoe, Snyder and Pacific Railway
Co.
Sand Springs Railway Co.
Sou Line Railroad Co.
Southern Pacific Transportation Co.
Southern Railway of British Columbia
Ltd.
Texas Mexican Railway Co.
Texas South-Eastern Railroad
TFM, S.A. de C.V.
Toledo, Peoria & Western Railway
Corp.
Tyburn Railroad Company
Union Pacific Railroad Co.
Upper Merion and Plymouth Railroad
Co.
Vermont Railway, Inc.
Winston-Salem Southbound Railway
Co.
Wisconsin & Southern Railroad Co.
Wisconsin Central Ltd.

NON-RAILROAD COMPANIES

Advance Transportation Co.
Agmark Foods, Inc.
Alliance Transportation, Inc.
American President Lines
Amoco Oil Company
Anton Carston & Son
Associated Container Transportation
(USA)
Atlantic Container Line
Bay Cities Leasing Company
Boeing Company
Boise Cascade Corp.
Celadon Trucking Services, Inc.
Chessie Motor Express, Inc.
Combined Transport Group, Inc.
Coordinated Caribbean Transport, Inc.
Crate Intermodal Service
Crowley American Transport, Inc.
Crowley Marine Services
Crowley Maritime Corp.
D.M.L. Container Service
Eagle Systems Inc.
Evergreen Marine Corporation
Galapagos Lines S.A.
General American Marks Company
G. I. Intermodal, U.S.A., Inc.
G. T. Leasing 2966859 Canada, Inc.

Manjin Shipping Company, Ltd.
Hapag-Lloyd, A G
Hill Brothers Transportation
Independent Freightway, Inc.
In-Terminal Services
Intermodal Express, Inc.
Intermodal Services, Inc.
Intermodal Transportation Services,
Inc.
Interpool, Inc.
Iowa Interstate Intermodal
ITSI Management Services Corp.
J.M.J. Projects, Inc.
Kawasaki Kisen Kaisha, Ltd.
"K" Line America, Inc.
Lower Valley Transportation, Inc.
Lykes Bros. Steamship Co., Inc.
Lyon World Wide Shipping, Inc.
Manufacturers Carriage
Mitsui O S K. Lines, Ltd.
NEMLC Leasing Corporation
Noptune Orient Lines, Ltd.
Nestle Transportation Co.
Nippon Yusen Kaisha (NYK Line &
Agents)
Oceanex Inc.
Pacific Northwest Perishable Shippers

Penske Logistics
Puerto Rico Maritime Shipping
Authority (PRMM, Inc., &
Agents)
Price Intermodal Southwest
Rail Terminal Services
REDON, Inc.
Santa Fe Terminal Services, Inc.
Seaboard Marine Ltd.
Sea Land Service, Inc.
Stevens Transport
Strategic Equipment Systems, Inc.
Tandem Transport, Inc.
Tolem Ocean Trailer Express, Inc.
Trac Lease, Inc.
Transconex
Triple Crown Services Company
Tropical Shipping Co., Ltd.
Union Pacific Fruit Express
United Arab Shipping Co.
Venezuelan Line
Werner Enterprises, Inc.
West Van Inc.
H. O. Wolding Inc.
WTL Rail Corporation
XTRA Intermodal
Zim Container Service

THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

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ASSOCIATION OF

AMERICAN RAILROADS

Operations and Maintenance Department • Interchange Services Division
50 F Street Northwest • Washington, D. C. 20001

CIRCULAR NO. OT-36-I

SEPTEMBER 1, 1992

CODE OF TRAILER AND CONTAINER SERVICE AND REPORTING RULES**TRAILER AND CONTAINER SERVICE AND REPORTING RULES AGREEMENT**

The subscribing railroad company hereby agrees with each other railroad subscriber hereto, except as other agreements between or among subscribers may provide, by filing a signed counterpart of this agreement with the Secretary, Business Services, Association of American Railroads, to abide by the Code of Trailer and Container Service and Reporting Rules, as amended from time to time.

This agreement may be canceled by any subscriber on thirty (30) days written notice to the Secretary, Business Services, Association of American Railroads.

Railroad Subscriber _____

By _____

Title _____

Date _____

SUBSCRIBERS—TRAILER AND CONTAINER SERVICE AND REPORTING RULES AGREEMENT

Amtrak - National Railroad Passenger Corp.
Angelina & Neches River Railroad
Bangor & Aroostook Railroad Company
Boston & Maine Corporation
Burlington Northern and Santa Fe Ry. Co.
Canadian National Railways
Canton Railroad Company
Cedar River Railroad Company
Chicago, Central and Pacific Railroad Co.
Claremont Concord Railroad Corp.
Clarendon & Pittsford Railroad Company
Columbus and Greenville Railway Company
Consolidated Rail Corporation
CP Rail
CSX Transportation, Inc.
Dakota, Minnesota & Eastern RR
Delaware and Hudson Railway
Company, Inc.
Delta Valley & Southern Railway Co.

East St. Louis Junction Railroad
EcoRail, Inc.
Florida East Coast Railway Company
Fox Valley & Western Ltd.
Gateway Western Railroad
Grafton & Upton Railroad Company
Grand Trunk Western Railroad Incorporated
Illinois Central Railroad Company
Iowa Interstate Railroad
Kankakee, Beaverville & Southern Railroad
Kansas City Southern Railway Company
(Includes Affiliates per Agreement)
Maine Central Railroad Company
Massachusetts Central Railroad Corp.
Middletown and New Jersey Ry. Co.
Minnesota, Dakota & Western Railway Co.
Missouri & Northern Arkansas Railroad
New York and Atlantic Railway
Norfolk Southern Railway Company
(Includes Affiliates Per Agreement)

Ontario L'Original Railway, Inc.
Paducah & Louisville Railway, Inc.
Portland Terminal Company
Providence & Worcester Railroad
Roscoe, Snyder and Pacific Railway Co.
Soo Line Railroad Company
Southern Pacific Transportation Company
Southern Railway of British Columbia, Ltd.
Texas Mexican Railway Company
Texas South-Eastern Railroad
TFM, S.A. de C.V.
Toledo, Peoria & Western Railway Corp.
Tyburn Railroad Company
Union Pacific Railroad
Vermont Railway, Inc.
Winston-Salem Southbound Ry. Co.
Wisconsin & Southern Railroad Company
Wisconsin Central Ltd.

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THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

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TRAILER AND CONTAINER SERVICE & REPORTING RULES—Continued**EXCEPTIONS**

- (4) A railroad must not deliver an empty container bearing its own reporting marks to another railroad unless the receiving railroad has requested equipment consistent with rule-1-A-3.
- (5) A railroad must deliver an empty container to the owner if the city where it was received loaded is the same city that the interchange exists for the empty reverse route authority.
- (6) The receiving carrier may request the dates establishing the reverse route authority from the delivering carrier. The delivering carrier must furnish dates requested within 5 days.

RULE 1A-Handling of General Service Containers

Empty foreign containers on chassis-bogies designated as general service not handled in accordance with Rule 1 may be:

1. Delivered empty to the home road at any junction.
2. Delivered empty to the road from which received under load, at the junction where received.
3. Delivered empty to any road requesting General Service Containers at a junction mutually agreed (direct connection) where the delivering carrier has ascertained that the requesting carrier has an agreement with the owner to accept such containers.

RULE 2-Handling of Non-General Service Containers

When the origin carrier has ascertained that all carriers involved in the route have agreements with the owner to accept such containers, empty foreign containers not designated as general service, shall, unless otherwise mutually agreed, be:

- (a) Loaded to or via home road.
- (b) Loaded in the direction of home road.
- (c) Delivered to home road (direct connection).
- (d) Delivered empty to the road from which received under load, at the junction where received.

RULE 3-Stevedoring, Ferry, Barge or Rail Restrictions

Foreign trailers/containers must not be loaded via or delivered empty to a water carrier for transportation by water or to an air carrier for transportation by air except for transportation in interstate commerce by common carriers between points within the continental United States (not including Alaska and Hawaii) without permission of the owner filed with the A.A.R. Interchange Services Division.

RULE 4-Interchange

Unless otherwise agreed to by roads involved, containers on chassis-bogies shall be considered as having been delivered (interchanged):

- (a) When car on which containers on chassis-bogies is loaded is placed upon a track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding and delivery and accepted by inspector of receiving road.
- (b) When container on chassis-bogie interchanged by highway is placed in a yard or parking space agreed upon and designated as a point of interchange for such delivery between carriers, and accompanied or preceded by proper data for forwarding and delivery together with inspection form prescribed in the AAR TOFC/COFC Interchange Rules.
- (c) A receiving carrier refusing an empty container on chassis-bogie moving in highway interchange in compliance with Service Rules 1, 1A and 2 shall be liable to the delivering carrier for cartage expense incurred for each container so refused.

NOTE: When possible, the delivering document accompanying empty containers is to reference the data establishing the reverse route authority.

SECTION 3 - REPORTING MARKS AND NUMBERING SYSTEM**RULE 1-Numbering System For Trailers, Chassis and Containers**

Applications for the assignment of reporting marks must be submitted to the Secretary, Business Services, Association of American Railroads. Applicants must meet the requirements of Circular No. OT-5 Series. In addition, applicants must comply with the provisions of Paragraphs (a), (b) and (c) of this rule.

- (a) Reporting marks for TRAILERS in TOFC service shall consist of no more than four alphabetical letters, the last of which shall be the letter "Z". A container welded to a chassis shall carry the letter "Z" in the last alpha position. The following six digit numbering system shall be used to indicate the type and size, as well as the unit number of each piece of equipment.

First Digit Series (Type)

- 1-Bogie-Chassis
- 2-Dry Vans
- 3-Flat Beds (includes removable sides, platforms & expandables)
- 4-Rail-Compatible Trailer
- 5-Mechanical Refrigerators
- 6-Dry Vans (includes wedge frame)
- 7-Insulated (includes wedge frame)
- 8-Open for future use.
- 9-Special Equipped (includes Vans, Open Tops, Drop frames, Curtain sides)
- 0-Tanks/Bulk

Second Digit Series (Size)

- 1-48' less than 53' long x 102" wide, 96" wide tandem.
- 2-48' less than 53' long x 102" wide, 102" wide tandem.
- 3-45' long and less than 48' x 102" wide, 96" wide tandem.
- 4-45' long and less than 48' x 102" wide, 102" wide tandem.
- 5-45' long and less than 48' x 96" wide, 96" wide tandem.
- 6-53' long or over x 102" wide.
- 7-40' long and less than 45' x 96" wide.
- 8-40' long and less than 45' x 96" wide.
- 9-40' long and less than 45' x 96" wide.
- 0-40' long and less than 45' x 96" wide.

The remaining digits are for numbering individual units.

- (b) Reporting marks for CHASSIS-BOGIES in TOFC/COFC Service shall consist of no more than four alphabetical letters, the last of which shall be the letter "Z". The following six digit numbering system shall be used to indicate the type and size, as well as the unit number of each piece of equipment.

First Digit Series (Type)

- 1-Bogie-Chassis
- 2-Dry Box
- 3-Flat Beds (includes removable side, platforms and expandable)
- 4-Open Tops
- 5-Mechanical Refrigerator
- 6-Dry Box
- 7-Insulated
- 8-Open for future use
- 9-Special Equipped Box
- 0-Tanks/Bulk

Second Digit Series (Size)

- 1-Over 40' & under 48' Straight
- 2-40' ft. Straight
- 3-40' ft. Gouseneck
- 4-40' ft. Combo (20/40)
- 5-40' ft. Tri-Purpose
- 6-45'-53' Extendible

The remaining digits are for numbering individual units.

- (c) Reporting marks for CONTAINERS in TOFC/COFC service shall consist of no more than four alphabetical letters, the last of which shall be the letter "U". The following six digit numbering system shall be used to indicate type and size, as well as the unit number of each piece of equipment.

First Digit Series (Type)

- 1-Open for future use
- 2-Dry Box
- 3-Flat Beds (includes removable side, platforms and expandable)
- 4-Open Tops
- 5-Mechanical Refrigerator
- 6-Dry Box
- 7-Insulated
- 8-Open for future use
- 9-Special Equipped Box
- 0-Tanks/Bulk

Second Digit Series (Size)

- 1-Less than 20'.
- 2-20' and less than 35'.
- 3-35' and over
- 4-35 ft. and less than 40'.
- 5-45' x 96" wide
- 6-Over 40' less than 48' x 102" wide
- 7-40' and less than 42'.
- 8-48' and less than 53'.
- 9-40' and less than 42'.
- 0-40' and less than 42'.

The remaining digits are for numbering individual units.

- (d) Stencil or placard the appropriate UMLER Fitting Code(s) on equipment to visually identify closed units with special equipment. This identifier to be located immediately below the unit number on the rear and nose of the unit.

- (e) It is recommended that stencils be applied to trailers:

- (1) With 42" kingpin settings.
- (2) With 102" wide tandems.
- (3) Exceeding 45' in length.
- (4) Exceeding 96" in width.

NOTE: Paragraphs (a), (b) and (c) apply to all new equipment placed in service after August 1, 1988.

RULE 2-Miscellaneous Requirements

- (a) Identification markings of trailers, containers, chassis and bogies must comply with the AAR TOFC/COFC Interchange Rules.
- (b) Equipment used in interchange service must be listed in *The Official Intermodal Equipment Register*.
- (c) A container welded to a chassis shall be registered in the Universal Machine Language Equipment Register (UMLER) as a trailer, using an AAR Trailer Type Code.

THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

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TRAILER AND CONTAINER SERVICE & REPORTING RULES—Continued**GENERAL SECTION****RULE 1 - Procedures For Interpretations and Revisions**

The Intermodal Steering Committee of the Interchange Services Division, Association of American Railroads, shall have authority to interpret these rules, and to make recommendations for changes or revisions thereto to the Operations General Committee, Interchange Services Division, Association of American Railroads. Upon approval by the Operations General Committee, such changes or revisions to these rules will be submitted to the Subscribers for vote by letter ballot (one vote for each trailer or container bearing railroad reporting marks which is owned, leased or controlled by Subscribers, with an affirmative majority vote of all Subscribers necessary for approval.)

RULE 2 - Arbitration

To render formal interpretations of these rules and to settle disputes arising under them, the Operations General Committee shall act as an Arbitration Committee. Members representing a majority of the total votes of the committee shall be present to constitute a quorum.

In the event any question or dispute arises concerning these rules, it may by agreement of the disputing parties be submitted to the Arbitration Committee in abstract through the Secretary, Business Services. The abstracts shall briefly set forth the matter to be interpreted, or the points at issue in the instant dispute and each party's interpretation of the rules, or orders upon which its position is based. The Arbitration Committee shall base its decision upon the rules and the abstract submitted. Should one of the parties elect not to furnish the necessary information, the Arbitration Committee shall use its judgement as to whether it can properly decide the controversy. In case a question shall arise not covered by the rules, the parties disagreeing may, by mutual consent, submit such questions to the Arbitration Committee. Any expenses incurred by the Arbitration Committee shall be borne by the party against whom an adverse decision is rendered. The decision of the Arbitration Committee shall be final.

CODE OF TRAILER AND CONTAINER REPORTING RULES

Effective January 1, 1999

PREFACE

Unless otherwise agreed to, these rules shall apply to trailers and containers bearing railroad reporting marks of subscribers. Where "Use Charge" or "Agreed Use Charge" appears in these rules, it means the agreed rate to be paid for the use of trailers or containers established by agreement between the handling road and the owner. Where "Trailer" appears in these rules, it shall be interpreted to include General Service containers used in trailer on freight car service.

CODE OF TRAILER AND CONTAINER REPORTING RULES

RULE 1-T Usage Reporting and Registration

A. Payments

1. Trailer use, separated by the trailer's individual loaded and empty cycles as defined in Rule 2-T, must be reported to trailer owner within one (1) month and ten (10) days from the last day of the month in which it is used, including reporting for trailers on hand at end of that month.

2. Trailer use transactions, including trailers reported at zero rates, must be reported.

3. Railroad holder of reporting marks desiring to direct reports to a lessor must notify other roads in writing. No more than one lessor may be designated to receive reports on trailers assigned a particular reporting mark.

B. UMLER Registration

Individual trailers shall be reported to the Secretary, Customer Service Division, as required in the Universal Machine Language Equipment Register (UMLER) format and published in "The Official Intermodal Equipment Register." UMLER information received by the Secretary by the last working day of the month will be effective the first day of the subsequent month.

C. Taxes

Use charges accrued in the United States on trailers owned by the Ferrocarriles Nacionales de Mexico (National Railway of Mexico) which are under the United States revenue laws, are subject to income taxes on such trailer use earnings payable to the Internal Revenue Service by or for the account of the respective trailer owners.

D. Possession by Non-Subscriber

If a subscriber interchanges equipment to a non-subscriber, as evidenced by the official interchange created through Liability Continuity System (LCS) processing, the subscriber will be responsible for the performance of all terms of this agreement in the same manner as if the equipment were in the possession of the subscriber.

E. Responsibility for Use Charge(s)

1. When a subscriber hereto, as the origin billing road, delivers or causes to be delivered, a trailer to another party, whether or not a subscriber, not having a use charge agreement with the trailer owner, the origin road agrees to be responsible for the owner's use charge until the trailer is either delivered to the owner or to another party, whether or not a subscriber, which has a use charge agreement with the owner.

2. Trailers shall not be loaded or forwarded empty to destinations outside the continental United States (not including Alaska and Hawaii) and Canada without permission of the trailer owner. Road violating this rule will be responsible for the agreed use charge.

RULE 2-T Computation of Days and Cycles

A. Days

Days shall be reckoned by subtracting the date of receipt from the date of delivery as evidenced by the official interchange created through LCS processing. The day of receipt shall be disregarded and payment made for the day of delivery. A road receiving and delivering a trailer on the same day shall not pay a use charge for that day.

B. Cycle Hours

For purposes of cycle reporting the first hour and the last hour of a loaded or empty cycle shall be reported.

C. Record Source

1. Interchange records of receipt and delivery under this rule shall be those obtained from the reports provided for in Rule 9-T.

2. Other cycle event records under this rule shall be those obtained from the paying road's records.

D. Cycles

1. The loaded cycle shall begin with the earliest loaded event (e.g., loaded receipt, loaded release, loaded inbound/outbound movement, etc.).

2. The empty cycle shall begin with the earliest empty event (e.g., empty receipt, empty release, empty inbound/outbound movement, etc.).

3. Back to back empty or loaded cycles will be reported as separate cycles.

INTERPRETATION

Question: How should cycles that span more than one month be reported?

Answer: For trailers on hand at the end of a month, reportings shall

be made through the last hour of the month even though the cycle has not been completed.

RULE 3-T Use Reports

A. Instructions for Making and Handling Reports

1. Use reports shall be forwarded to trailer owners not later than the 10th day of the second month following the month in which use occurred.

2. A report (Form G-1-T) shall be made on a form, 8-1/2 x 11 inches, with a minimum of 3/4 inch binding space at the lefthand side as shown in Appendix 4. Report shall show the trailer number in full and use (time and miles) must be reported by the individual loaded and empty cycle for each trailer in the possession of the road making the report. A trailer earning no use charge shall be reported indicating days earned but no amount. The number of columns on Form G-1-1 may be varied to accommodate mechanical preparation. Participants in the AAR Car Hire Exchange Program will not be required to furnish other participants the same detail in printed trailer use report form as prescribed in Form G-1-T and O-1-T, but will be required to furnish only the summary report as prescribed in Paragraph 3.

3. A Summary Report Form, as shown in Appendix 5 and/or Appendix 11 (Circular OT 10 series) shall be made on a form, 8-1/2 x 11 inches, with a minimum of 3/4 inch binding space on the left hand side. The summary will include trailer use charge payments of current and adjustment reportings, reclaims and discrepancy claims.

4. Only one report shall be furnished for each month.

5. Errors and omissions must be reported in a separate adjustment report, for a subsequent month on Form O-1-T as shown in Appendix 6.

6. Such adjustment report shall be of the same size with the same binding space as that provided for the report Form G-1-1. The number of columns reported on Form O-1-T may be varied to accommodate mechanical preparation.

8. The use of alternate numbers in reporting use charges does not constitute an error or omission, providing one of the trailer numbers shown is the correct number, but each trailer that has earned a use charge must be reported separately either with or without an alternate number.

7. Use charge allowed in error may be deducted in use charge reports forwarded within two (2) months and ten (10) days from the last day of the month for which the use charge was reported as having been earned, without requesting authority from trailer owner, but such deduction shall not be made after that period except by authority from the road to which the use charge is reported and claim therefore is presented in accordance with the provisions of the rule. Deductions must not be shown on the same sheet as additions.

8. Use charge reported and subsequently deducted in accordance with this rule cancels such use charge and leaves the owner road in the same position as if the use charge had never been reported.

RULE 4-T (Intentionally Not Used)

RULE 5-T (Intentionally Not Used)

RULE 6-T (Intentionally Not Used)

RULE 7-T - Reclaim for Damaged Equipment - Handling Line Responsibility

A. Reporting Requirements

When equipment is badly damaged, lost or stolen and reported to the owner with a request for its depreciated value, responsibility for use charge (see Paragraph F), will cease from date of original notification until repairs are authorized or disposition furnished by owner.

B. Return of Equipment

If the owner requests equipment be sent home for repairs, user will initiate return of equipment within ten (10) days after notice is received, otherwise, responsibility for use charge shall be reinstated.

C. Intermediate Road Responsibility

An intermediate road is responsible for trailer use charges on a trailer returned home under Paragraph B of this rule but the trailer use charge paid may be reclaimed under the provisions of Paragraph F. Equipment moved home under this rule shall be so indicated on movement document.

D. Settlement

If, on receipt from owner of depreciated value, user decides to repair or send the trailer to the owner for repairs, or the trailer is recovered, the responsibility for use charge shall continue from date of original written notification to owner as destroyed, lost or stolen.

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E. Claims for Use Charge

When equipment is lost, stolen or otherwise unreported and no use charge allowed claim for such charge shall be presented to the subscriber last in possession of the equipment as evidenced by the official interchange created through LCS processing.

F. Time Limits and Procedures

Trailer use charges shall be paid to the trailer owner and recovered by reclaim. Refer to Trailer Reporting Rules 13-T and 14-T to determine time limits and procedures for issuing, handling and deducting reclaims.

RULE 8-T Reclaim for Damaged Equipment-Owners Responsibility**A. Repair Material**

When a trailer is detained awaiting receipt of repair material, which must be obtained from the owner and/or manufacturer, responsibility for use charge shall cease from the date the material is ordered from the owner/manufacturer until the date it is delivered to line of road or company ordering same (see Paragraph E.), as evidenced by shipping receipt or waybill.

B. AAR Interchange Rule 165

1. When trailer is reported to owner under AAR TOFC/COFC Interchange Rule 165, responsibility for use charge shall cease from date of report.

2. If owner authorizes the repair of trailer, responsibility for use charge shall begin after repairs are completed but in no case shall relief extend beyond sixty (60) days from the date owner authorized the repairs.

C. Home Shop Disposition

If road on which trailer was reported, at owner's request, sends the trailer home for repairs, responsibility for use charge shall cease from date of original report to owner until date trailer leaves reporting road as evidenced by the official interchange created through LCS processing. In no event shall relief extend beyond sixty (60) days from date owner requested trailer sent home.

D. Intermediate Road Responsibility

An intermediate road is responsible for trailer use charges on a trailer moving home for repairs, but the trailer use charge paid may be reclaimed under the provisions of Paragraph E.

E. Time Limits and Procedures

Trailer use charge shall be paid to the trailer owner and recovered by reclaim. Refer to Trailer Reporting Rules 13-T and 14-T to determine time limits and procedures for issuing, handling and deducting reclaims.

RULE 9-T - Interchange Reporting**A. Authority**

Trailer Service Rule 4 determines the rules and procedures for interchange of equipment. This rule is not intended to contradict such procedures, but rather to incorporate reporting instructions, correction procedures, and Liability Continuity System (LCS) default logic to permit correct reporting of usage.

B. Governing Record

The official interchange record created through LCS processing will be the record used for payment of trailer use charges.

C. Methods of Preparation

Interchange information will be reported through the AAR TRAIN system and processed through LCS which shall be the official interchange record and take precedence over conflicting information otherwise reported.

D. Content and Frequency

The information reported to the AAR TRAIN system must include trailer initial and number, status (loaded or empty), month, day and hour of interchange, delivering road, receiving road, and location of interchange. Failure to report an interchange or correction within 120 hours of the event will result in the official interchange record being generated based on the connecting road's reporting of delivery / receipt or LCS logic.

RULE 10-T LCS Default Logic and Junction Reports**A. Default Logic**

1. All applications of default logic require a minimum of three (3) insequence logical events prior to the application of LCS logic. Default logic will not benefit the carrier that failed to report. Multiple data elements, within a single interchange record, may be changed by Liability Continuity System (LCS) default logic to create the official LCS interchange.

2. Reporting events used by LCS to properly correct interchange reportings are:

Interchange (Receipt, Delivery and Port)
Arrival
Departure
Pull

In / Out TRUK
Ramp / Deramp
In / Out Gate

3. Existing TRUK Logic will be retained as part of LCS. It will continue to process the following two situations:

a. If a trailer is reported Out To TRUK and In From TRUK by the same carrier, no action is needed.

b. If a trailer is reported Out To TRUK by the delivering carrier and In From TRUK by the receiving carrier, TRUK logic will create an interchange at the time of the In From TRUK report.

4. If the LCS logic determines that a standard (steel wheel) delivery or receipt has been reported on a trailer and the corresponding receipt or delivery is missing, the same LCS default logic that applies to freight equipment will be used to validate the reported interchange.

5. Neither Carrier Reports

a. When both carriers fail to report an interchange, and neither carrier reports a TRUK message if continuity between the two carriers can be established prior to the 120th hour of the subsequent month, LCS will create an Out To TRUK message for the delivering carrier two minutes before the first equipment event on the receiving carrier. LCS will also create an In From TRUK message for the receiving carrier one minute before the first equipment event on the receiving carrier. The TRUK logic will create an interchange from the delivering carrier to the receiving carrier at the time of the In From TRUK report on the receiving carrier. The load / empty status will be taken from the delivering carrier, and the location will be determined by LCS processing.

b. When both carriers fail to report an interchange, and neither carrier reports a TRUK message, if continuity is not established prior to the 120th hour of the next report month, LCS will create an Out To TRUK message for the delivering carrier on the first minute of the report month that continuity is established. LCS will also create an In From TRUK message for the receiving carrier on the second minute of the report month that continuity is established.

6. Delivering Carrier Does Not Report

When the delivering carrier fails to report an interchange, LCS will create an official interchange using the reporting of the receiving carrier.

7. Receiving Carrier Does Not Report

When the receiving carrier fails to report an interchange, LCS will create an official interchange using the reporting of the delivering carrier.

8. Both Carriers Report But Do Not Agree

a. When both carriers attempt to report the same interchange activity but the location is different, the delivering carrier's location will be used.

b. When both carriers attempt to report the same interchange activity but the time is different by four (4) hours or less, the delivering carrier's time will be used.

c. When both carriers attempt to report the same interchange activity but the time is different by more than four (4) hours, LCS will allocate the time equally between the two carriers.

9. Out To TRUK Reported By Delivering Carrier

a. If the delivering carrier reports an Out To TRUK and the trailer starts moving within the same calendar month on the receiving carrier which did not report an In From TRUK, LCS will create an In From TRUK reporting one minute after the reported Out To TRUK.

b. If the delivering carrier reports an Out To TRUK in one calendar month and the trailer starts moving during a different month on the receiving carrier which did not report an In From TRUK, LCS will create an In From TRUK reporting for the receiving carrier, on the first minute of the month in which the trailer started moving on the receiving road.

10. In From TRUK Reported By Receiving Carrier

If a trailer is moving on the delivering carrier and is then reported In From TRUK by the receiving carrier, LCS will create an Out To TRUK reporting for the delivering carrier one minute before the reported In From TRUK.

11. Out To / In from Port

If an interchange delivery to Port is reported, the liability ceases. Liability commences on the next carrier of record upon the reporting of three insequence logical events.

B. Junction Reports

All interchange reports will be matched or generated by LCS processing, coded per Appendix 7-A of those rules, and returned as junctions to the delivering road, receiving road and the equipment owner.

RULE 11-T Claim Handling**A. Instructions for Making and Handling Claims**

1. Claims covering errors, including incorrect charges, or omissions in trailer use charge report shall be presented in accordance with Appendix 7. Claims shall be presented after three (3) months and within five (5) months from the last day of the month in which the use

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charge was earned in compliance with the following:

2. A request for authority to deduct use charge reported as having been earned constitutes a valid claim when presented to trailer owner within five (5) months from the last day of the month for which use charge was reported.

3. Claims shall not be presented until all amounts previously reported have been properly credited. When total days for which the agreed use charge received on any trailer is equal to or greater than the total number of days due, no claims for short days will be issued against any road.

4. Claims for underpayment must show the claimed use charge. All such claims must be verified by claimant before presentation. Point of interchange, as evidenced by the official interchange created through LCS processing, or cycle change must be shown on all claims issued.

5. If complete cycle reports have not been received, claim should be filed against the road having apparently failed to furnish a report, and claimant should indicate that such information has not been received by inserting subsequent cycle record, if available, and show days allowed by that road for month claimed.

6. The following rules govern the records required for the month(s) prior and subsequent to the month claimed:

a. A claim covering trailer ON HAND at beginning of month must show date and hour of preceding cycle record or on-line event instead of "OH."

b. A claim covering trailer ON HAND at end of the month must show date and hour of succeeding cycle record or on-line event instead of "OH."

c. A claim covering a trailer off-line at beginning of month must show the last interchange record prior to the month claimed. If the latest cycle record for the preceding month(s) is after the last interchange record, it must also be included.

d. A claim covering a trailer off line at end of month must show the first interchange record in the subsequent month(s), if available. If the first cycle record for the subsequent month(s) is before the interchange record it must also be included on the claim.

7. A claim presented in accordance with the rule may be continued, provided the trailer owner returns the claim to the road to which originally presented or presents it to another road within a period of two (2) months from the last day of the two (2) month period allowed the road which handled claim prior to reissuance. The number of days shown on the original claim may be increased by the trailer owner if investigation develops that the use charge is due from a road other than the road to which the claim was originally addressed.

8. Claims properly presented in accordance with this rule, which are not handled as provided in Paragraph B, shall become due and payable upon presentation of a bill by claimant provided bill is presented by claimant within six (6) months from the date amount claimed became due.

B. Instructions to Road Receiving Claims

1. A road initially receiving a claim from a trailer owner must within seven (7) months from the last day of the month in which use charge was earned:

(1) pay all use charge claimed in the next use report and claim should not be returned to trailer owner,

(2) pay partial amount due in the next use report and disprove further responsibility with official LCS interchange record returning disproved claim to trailer owner,

(3) disprove any responsibility with official LCS interchange record, returning disproved claim to trailer owner.

This procedure will require that the trailer owner record payment received.

2. If claim is not satisfied, trailer owner shall handle with the next delinquent road in accordance with Paragraph A.

3. A road receiving a claim from a trailer owner must, within two (2) months from the last day of the month that limits the issuance of such claim as prescribed in Paragraph A.7., handle as provided in Paragraph B.1.

C. Adjustment of Errors Developed in the Handling of Claims

1. Erroneous payment of use charges as set forth in the following paragraphs of this rule constitute a valid claim under the provisions of Paragraph B., and must be so handled.

2. When use charge has been reported to other than trailer owner under incorrect initials or number or for the wrong month, which fact is developed in the investigation of a claim, the reporting road shall be responsible to trailer owner for use charge earned and shall have the privilege of continuing such claim for refund of use charge incorrectly paid irrespective of the amount shown on original claim, from the road to which it was incorrectly reported.

3. When use charge has been reported to trailer owner under incorrect initials or number, or for the wrong month, which fact is developed in the investigation of a claim, the reporting road shall deduct the previously allowed and re-allow the use charge plus any related

charges due

4. If such deduction of charges from a trailer number leaves trailer owner short, the trailer owner shall have the privilege of continuing claim under the trailer number on which the deduction was made.

RULE 12-T Use Charges Versus Reclaim and Recoveries

The reporting of amounts accruing for the use of trailers shall be made monthly without regard to reclaims pending or other trailer reporting rules which may provide for recovery of use charges.

RULE 13-T Time Limits for Processing Reclaim(s)

A. Scope

This rule applies to those roads which do not participate in the AAR Car Hire Data Exchange program. This rule will also apply to AAR Car Hire Data Exchange participants who elect not to utilize the data exchange process for recoveries provided for in Rule 14-T.

B. Intermediate Switching Reclaim

Any intermediate switching reclaim reports shall be prepared separately and presented within three (3) months from the last day of the month in which the use charge accrued, except that supplementary reclaim statements covering errors and/or omissions shall be presented within six (6) months from the last day of the month in which the use charge accrued. Original and supplementary switching reclaim statements shall be allowed as presented within thirty (30) days after receipt. The road paying an intermediate switching reclaim may present exceptions to cover errors or adjustments therein, provided it is presented within three (3) months from the last day of the month in which the reclaim on which exception is made was received. However, exceptions and supplementary reclaims in connection with adjustment of revenue affecting switching charges may be presented within three (3) months from the last day of the month in which final adjustment of charges is made, but exceptions to reclaims will not be allowed in connection with adjustment of charges on stop or milling-in-transit service. The privilege of continuance of the exception shall cease when either road interested fails to return it to the other road within two months from the last day of the month in which it was received. The delinquent road to be responsible for the unadjusted amount.

C. Trailer and Container Reporting Rules 7-T and 8-T

1. Reclaim under Trailer and Container Reporting Rules 7-T and 8-T shall be presented within three (3) months from the last day of the month in which the use charge accrued. In case use charge accrued in more than one (1) month, the last calendar month will be considered as the month use charge accrued. Supplementary reclaims covering errors and/or omissions shall be presented within five (5) months from the last day of the month use charge accrued. Original and supplementary reclaims shall be allowed with or without deduction not later than the tenth (10th) day of the third (3rd) month following month in which reclaim is received.

2. Counter reclaims shall be presented to the original claimant within nine (9) months from the last day of the month in which reclaim was allowed. Counter reclaims shall be allowed with or without deduction not later than the tenth (10th) day of the third (3rd) month following month in which counter reclaim is received.

3. Reclaims and counter reclaims that are partially or totally declined must be returned to the reclaiming road prior to the last day of the third (3rd) month following month in which reclaim was received. The privilege of continuance of reclaim thereafter shall cease when either road fails to return it to the other within two (2) months from the last day of the month in which it was last received. The delinquent road to be responsible for the unadjusted amount.

D. Trailer and Container Reporting Rules 15-T and 16-T

1. a. Reclaim under Trailer and Container Reporting Rule 15-T shall be presented within three (3) months from the last day of the month in which trailers were delivered by the holding road.

b. Reclaim under Trailer and Container Reporting Rule 16-T shall be presented within three (3) months from the last day of the month in which disposition of the trailer is received by the holding road, except where detention adjustment is involved, in which case reclaim shall be presented within three (3) months from the last day of the month in which detention is cancelled or refunded.

c. The road receiving reclaim shall present exceptions to the claimant within three (3) months from the last day of the month in which the reclaim was received and shall allow in the next open use charge report the amount not covered by exceptions.

2. Counter reclaims shall be presented to the original claimant within three (3) months from the last day of the month in which reclaim was allowed. Counter reclaims shall be allowed with or without exception within three (3) months from the last day of the month in which counter reclaim was received.

3. The privilege of continuance of reclaim or counter reclaim thereafter shall cease when either interested road fails to return it to the other within two (2) months from the last day of the month in which it was last received. The delinquent road to be responsible for the unadjusted amount.

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E. General Provisions

1. The provisions of Paragraphs A, B, C or D will not prevent the continuance of any reclaim after the period named if it has been previously opened when the reclaim eventually rests upon some road other than the one originally addressed, except that the reclaim shall be presented to such other road within two (2) months from the last day of the month in which it was last received by claimant. Further handling shall be subject to the provisions of Paragraphs A, B, C or D.

2. Reclaims shall be made by the designated officer of the road which pays the use charge to the designated officer of the road from which the allowance is reclaimed, unless specifically agreed by the interested roads to permit the presentation and acceptance of such reclaims by local representatives.

RULE 14-T Time Limits for Deducting Reclaims**A. General Provisions**

The deduction provisions contained in this rule are only applicable if:

1. The road is a participant in the AAR Car Hire Data Exchange Program (Reclaim Formats).

2. Reclaim is under Trailer and Container Reporting Rule(s) 7-T and/or 8-T.

3. Provided for in Bilateral or Special Agreements.

Participants will not be required to furnish the paper reclaim detail to other participants as may be prescribed in those rules, but will be required to furnish a paper summary report for each reclaim item; totals shall be shown in the appropriate lines of the reclaim section of Appendix 5. Paper detail and summary reports must be provided to a nonparticipant in the month for which the deduction is made. The continuance of any reclaim beyond the scope of this rule will be handled under the provisions of Rule 13-T.

B. Original Reclaim

Original reclaim(s) as provided for in Paragraph A may be deducted within three (3) months and ten (10) days from the last day of the month the trailer use charge accrued.

C. Counter Reclaim

Counter reclaim statements to the original reclaim statements may be counter deducted on a one-time basis within three (3) months and ten (10) days of the original reclaim deduction. Counter reclaims other than the one-time basis shall be presented as provided in Rule 13-T.

D. Supplementary Reclaim

Supplementary reclaim statement may not be deducted. They must be handled under the provisions of Rule 13-T.

RULE 15-T Reclaim for Interchange Offering**A. Responsibility**

1. A road failing to receive promptly from a connection trailers on which it has laid no embargo shall be responsible to the connection for use charge incurred by the reclaiming road on trailers so held for delivery, including the home trailers of such connection.

2. If such failure to receive shall continue for more than three days the delinquent line shall thereafter in addition be responsible for the use charge incurred by the reclaiming road on all trailers wherever in transit which are thus held back for delivery.

3. When the hour at which the receiving road clears the interchange track is so late that the delivering road cannot place cars carrying trailers on interchange track before midnight, the receiving road shall be responsible for the use charge incurred by the reclaiming road on such trailers for the following day, subject to local agreement as to time required to make delivery.

4. When the receiving road cannot make parking space available at a designated lot by reason of congestion or that lot has closed, so that the delivery road cannot accomplish delivery, the receiving road shall be responsible for the use charge incurred by the reclaiming road on such trailers until delivery is possible subject to local agreement as to time required to make delivery.

B. Notification and Preparation

It shall be the duty of the connection intending to reclaim to notify the delinquent line daily, prior to midnight, at the point where trailers are offered, of the total number of trailers so held for it, and within 48 hours, from midnight of the day trailers are offered, furnish the initials and numbers of the trailers.

RULE 16-T Embargoes**A. Notification**

Embargoes issued by the embargoing road must be by notice to the Customer Service Division.

B. Issuing Provisions

When a road gives notice for any reason it will not accept trailers in any specified traffic, thereby laying an embargo, the following provisions will govern.

1. An origin road may accept trailers for movement to embargoed destinations only for two (2) days after the effective date of the embargo and then only for trailers which were loaded or in the process

of loading prior to the effective date of the embargo.

2. The embargoing road should accept trailers from connections which were originated in accordance with the provisions of Paragraph 1 above, except when it is physically impossible to receive any traffic due to washouts, floods, accidents or other interruptions of service. When trailers, properly loaded prior to or within the two (2) days (the date of loading, diversion or reconsignment to be determined from the data accompanying the trailer) are refused at any time during the effectiveness of the embargo, the road holding the trailers may reclaim trailer hire under Rule 15-T, for the number of days such trailers are held, not exceeding the duration of the embargo. For trailer use reclaim regulations applying to trailers refused account improper or improperly applied permits to embargoes see Paragraph D of this rule.

C. Empty Trailers

A railroad may not lay an embargo on its own empty trailers returned home in accordance with Trailer and Container Service Rules.

D. Reclaim

Unless otherwise agreed, reclaim for use charge on a trailer held by reason of an improper or improperly applied permit to an embargo should be settled as follows:

When a road laying an embargo refuses to accept a trailer account improper or improperly applied permit to its embargo, it shall notify holding road, stating its exception to the permit, prior to midnight of the second day from date the trailer is delivered or loaded with necessary data for forwarding. If it neglects to give such notice, it shall be responsible for the use charge incurred by the reclaiming road for the number of days the trailer is held.

RULE 17-T Arbitration Procedures**A. Scope**

To interpret these rules and to settle disputes arising from them, the Operations General Committee, Association of American Railroads, shall act as an Arbitration Committee. Members representing a majority of the total votes of the committee shall be present to constitute a quorum.

B. Rule Disputes

In case any question or dispute arises under these rules, it may by agreement of the disputing parties be submitted to the Arbitration Committee through the Secretary of the Customer Service Division in abstract. The abstracts shall briefly set forth the points at issue and each party's interpretation of the rules upon which its claim is based. The Arbitration Committee shall base its decisions upon the rules and the abstract submitted, and its decisions shall be final. Should one of the parties elect not to furnish the necessary information, the Arbitration Committee shall use its judgment as to whether it can properly decide. All decisions shall be reported to the parties involved in the dispute.

C. Non-Rule Disputes

In case a question shall arise not covered by the rules, the roads disagreeing may by mutual consent submit such questions to the Arbitration Committee.

RULE 18-T Interpretation and Revision of Rules

The Committee on Car Service, Customer Service Division, Association of American Railroads, shall have authority to informally interpret these rules, and to make recommendations for changes or revisions thereof to the Operations General Committee, Association of American Railroads. Upon approval by the Operations General Committee, such changes or revisions to these rules will be submitted to the subscribers for vote by letter ballot (one vote for each trailer or container bearing railroad reporting marks which is owned, leased or controlled by subscribers, with an affirmative majority vote of all subscribers necessary for approval).

RULE 19-T Supervision and Audit**A. Supervision**

The Customer Service Division, subject to direction of the Operations General Committee, shall supervise the application of the Trailer and Container Service and Reporting Rules, and obtain trailer location statements and other trailer performance statistics as deemed necessary.

B. Audit Authorization

The audit team of the Accounting Division of the Association of American Railroads may conduct investigations and audits, including examination of trailer records as may be necessary, to insure the observance of those trailer and container reporting rules, and in the event that they are unable to adjust any matter with the individual railroads report their findings to the affected subscribers.

RULE 20-T (Intentionally Not Used)**RULE 21-T (Intentionally Not Used)****RULE 22-T (Intentionally Not Used)**



Photo by Larry Smith/Trans Pix

Rail Capacity Phaseout

Move out of rail-trailer business could further constrict fall peak shipping options

The rail industry's decision to exit the trailer market could leave thousands of trailers stranded, scaling back shippers' options during a busy period that could top last year's peak season.

With capacity already squeezed, some shippers fear they may have to alternative, probably more expensive, transportation.

BNSF Railway, the first railroad to announce its exit, told intermodal customers April 18 it will no longer manage rail trailers in order to focus on line-haul services.

Railroad and KCS followed. NS said "the current intermodal marketplace dictates that NS make changes to the structure of our agreements" regard-

ing 45- and 48-foot intermodal trailers. Of the major U.S. railroads, only CSX will continue to manage rail-controlled trailers, "CSX will continue to provide rail-

controlled 45- and 48-foot trailers to meet the needs of our customers," said CSX.

Tracking Trailers, Containers



spokesman Gary Sease, who declined to elaborate on the railroad's decision.

Beginning May 18, BNSF and NS will begin a three-month phaseout of specific rail trailers. After that, the trailers will be

considered private and will move on the railroads at higher rates and only with proper revenue billing. Customers will be responsible for storing the equipment.

In addition, BNSF will begin returning its own fleet of 45-foot trailers, telling customers to return them to a BNSF intermodal facility.

Along with the trailers involved in the phaseout, the railroads' trailer-transit-

ion plan will account for roughly 30,000 containers.

The railroads' decision hits WTL Rail, a private equipment leasing company that owns many of the trailers that the

railroads will refuse to manage, particularly hard.

The phaseout will decrease available rail capacity, driving more business to higher priced trucking and container transportation, WTL says.

"The shipping public who relied on rail trailers for their business will seek alternative transportation options, all of which

more costly," said WTL President Richard Lombardo. "BNSF didn't look down road

to see what affect that move would have on the fall rush, when there's a higher level of activity from all over country. It's going

to create a serious shortage."

peak shipping season, Lombardo says.

"This is not a private contract service, providing trailer service falls under specific rules under (Association of American Railroads) guidelines," Lombardo said.

"Empty trailers may be loaded without regard to ownership destination or route," Lombardo believes he has a strong

enough argument to take to the Surface Transportation board, where he planned to file a petition last week.

"If BNSF phases out trailers, what's to stop them from phasing out boxcars? The ones not being heard here are the ship-

ping public. All the manufacturers see is that transportation rates are going up, and they just pass that down to the cus-

tomers. They don't see that the underlying cause is that the railroads ignoring their common carrier obligations."

Others see it as simple economics at time when the railroads have more freight than they can handle.

"Those trailers will still have the ability to move on the railroads, but we'll all just have to pay more," said Jason Hilsenbeck, president of LoadMatch, a Chicago-based intermodal freight matching service.

"Freight is going to move no matter what, the question is at what price."

Hilsenbeck said the move phaseout is part of a trend of railroads exiting equip-

ment management to focus on line-haul service.

"Intermodal represents the last segment for the railroads where they can push the shipper into managing their

equipment capacity," he said. "The demand for merely moving freight is so high right now that managing empty equipment is the last thing the railroads want to do."

BY JOHN GALLAGHER

VERIFIED STATEMENT OF JOHN J. ROBINSON

My name is John J. Robinson. I am a railroad transportation consultant with over 45 years of experience in the rail industry. A copy of my work experience is appended hereto. I have been requested to submit testimony in support of WTL Rail Corporation's Petition for Partial Revocation of Exemption as well as its Petition for Declaratory Order before the Surface Transportation Board.

As outlined in my resume, I served as Senior Assistant Vice President of the Transportation Division of the Association of American Railroads (AAR) from February 1981 through December 1992 with direct responsibility for car service, car hire and comparable intermodal matters. As such, I am thoroughly familiar with the history of prescribed car hire and the events that led to its depreservation by the ICC. I also followed the evolution of railroad trailer per diem rates, the Trailer Service Rules and the ultimate deregulation of all TOFC/COFC activity. Although my job description was somewhat modified in 1992, I continued to attend the meetings of the AAR committees with responsibility for these matters, including the OT General Committee to which I served as Secretary, until my retirement early in 1995.

1. Trailer Service Rule 1 was designed to facilitate the free loading and movement of General Service trailers, which includes the national pool of “rail controlled” trailers.

When the rail carriers initially drafted the Code of Trailer and Container Service Rules, the provisions therein were largely patterned after the Code of Car Service Rules, which governs the handling of “rail owned/controlled” freight cars. Recognizing the inherent flexibility of intermodalism, however, certain provisions were included to facilitate the utilization (ie: reloading) of “rail controlled” general service, free running trailers. This, in turn, facilitated the establishment and growth of a national pool of “rail controlled” trailers that could be loaded to virtually any destination on any railroad signatory to the Trailer Service Rules (See Trailer Service Rule 1 appended hereto as Attachment 1).

2. BNSF has selected an improper methodology for transitioning out of managing rail trailers.

As stated in its April 18, 2005 notice to its intermodal customers, BNSF has elected to “transition out of managing rail trailers”, beginning May 18, 2005 with “rail controlled” trailers bearing selected reporting (ie: ownership) marks. While any railroad is free to exercise its right to pursue valid business decisions, BNSF has selected the wrong method for achieving its objective. In addition, its action has precipitated a “domino effect” among the other intermodal rail carriers that, inadvertently or by design, will result in the immediate demise of the national “rail controlled” trailer pool. The arbitrary re-designation by one carrier of a trailer owner’s “rail controlled” trailer

reporting marks as "private", or the unjustified cancellation of a its use agreement, is not acceptable.

3. BNSF's announced intention to treat selected "rail controlled" reporting marks as "private" is not permissible under the Trailer Service Rules.

BNSF, a signatory to the Trailer Service Rules, has announced that as of May 18, 2005 (and subsequently June 18 and July 15) trailers bearing specified reporting marks will be considered "private" and, thereafter, will only be handled under revenue billing. There is no provision in the Code of Trailer Service Rules (TSR) that permits such unilateral action. A signatory railroad cannot arbitrarily declare that it will no longer recognize certain "rail controlled" reporting marks as such and will no longer accord them the handling provided for by the TSR. The trailers in question were designated "rail controlled" by their owners in compliance with the existing rules, and such status must be honored.

4. BNSF's arbitrary action precipitated similar action by virtually all of the intermodal rail carriers, which will destroy the national pool of "rail controlled" trailers.

BNSF's notice regarding its intended future handling of certain "rail controlled" trailers sent a message to the rest of the intermodal rail carriers that they could no longer utilize this equipment in free running service. Since the other carriers did not wish to find themselves holding surplus empty "rail controlled" trailers with no trailer service outlet for returning them to the home road, a chain reaction has resulted with one carrier after another of the Class I railroads making similar announcements. In fact, it happened so rapidly that one might reasonably suspect that some form of collusion may have

precipitated such immediate and uniform action. As a result of the aforementioned events, some 30,000 general service pool trailers of the "rail controlled" fleet have been effectively isolated and precluded from further use as free running equipment which, in turn, will promptly create a severe shortage of intermodal trailers.. This will result in immediate and irreparable harm, both to the intermodal shipping community that utilizes this fleet and the owners who have invested in these trailers with the expectation that they would retain their free running characteristics. Moreover, an estimated additional 25,000 pool trailers would be similarly boycotted by the Class I's. by mid 2006 if the BNSF and others follow the scheduled "transition".

5. An alternative and valid methodology for transitioning out of managing rail trailers is available to BNSF.

If the BNSF and other rail carriers desire to phase out their management of "rail controlled" trailers (ie: providing common carrier service), a valid and more appropriate method to achieve such an objective would be to gradually discontinue offering Plan 2 rate quotations for specific traffic lanes. Such a process would provide for the orderly withdrawal of "rail controlled" trailers from the national pool, as demand is gradually reduced and the trailers in question are re-marketed or retired.

6. Since the AAR and/or its member railroads are either unwilling or unable to police the rail carriers' compliance with the Trailer Service Rules, action by the Surface Transportation Board is required to protect the shipping public.

Since the Association of American Railroads (AAR) and its member railroads are either unwilling or unable to police the railroads' compliance with the existing Trailer Service Rules, it is incumbent upon the Surface Transportation Board (STB) to take the necessary

action to avoid an immediate and severe “rail controlled” trailer shortage. Imprudent or improper actions, camouflaged with the cloak of “independent action” should not go unchallenged. Because the rail carriers have failed in this instance to judiciously exercise their deregulation freedoms, intervention by the STB is required to protect the shipping public as well as “rail controlled” trailer providers. Existing trailer service rules should be complied with or, if revisions are necessary, the required procedures should be followed.

7. This is another instance where a Class I carrier has arbitrarily initiated action(s) to accomplish its own goals with no concern regarding the impact on the small “rail controlled” trailer providers.

The events cited herein are yet another example of a Class I carrier arbitrarily dictating the conditions for the use or non-use on its lines of the equipment of smaller providers of “rail controlled” pool trailers. The STB is well aware of another petition recently filed with it, calling attention to the arbitrary actions of a large Class I intermodal carrier. The Board’s ICC predecessor, in deciding the Crab Orchard case in 1995, indicated that it would intervene in the future if necessary to even the playing field between the Class I and Class III carriers, and to prevent the Class I’s from making imprudent unilateral decisions regarding the interchange of equipment with the Class III’s. The present impending situation, sparked by the BNSF’s unilateral action, is of such consequence that the STB must initiate the necessary action(s) to prevent the sudden demise of the “rail controlled” national pool and the resulting intermodal trailer shortage.

VERIFICATION

STATE OF)
) SS
CITY OF)

JOHN J. ROBINSON, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

John J. Robinson

Subscribed and sworn to before me, a Notary Public, in and for
the City of _____ in the State of MARYLAND, this 29th
day of April, 2005.

Matthew J. Buchheit

Notary Public

My Commission expires:

02/24/2007

John J. Robinson
11310 Glen Arm Road
Glen Arm, Maryland 21057
(410) 665-3725

Experience

- | | |
|----------------|---|
| 7/95 – Present | Rail Transportation Consultant |
| 1/95 – 6/95 | Executive Director, American Railway Engineering Association (AREA). Responsible for day-to-day management and direction of 4000-member professional railway engineering society, including technical conferences and publications. |
| 1/93 – 12/94 | Sr. Ass't. Vice President, Casualty Prevention Division, Operations & Maintenance Department, Association of American Railroads (AAR). Responsible for matters concerning safety, operating rules, derailment prevention, hazardous materials, tank car integrity and railroad scales. Also responsible for AAR's field force of 35 hazardous materials and mechanical inspectors. |
| 2/81 – 12/92 | Sr. Ass't Vice President, Transportation Division, AAR. Responsibilities included: car service, car hire, demurrage, station & terminal activities, police, medical and private car compensation. Also responsible for box car pooling, UMLER and TRAIN data bases. |
| 3/71 – 1/81 | Executive Director, Operating-Transportation Division, AAR. Directly responsible for car service, car hire, freight car cost of ownership, private car compensation, demurrage, station & terminal and intermodal activities.

Served as Secretary to the Operations General Committee, the Committee on Compensation, and the Arbitration Committee, as provided for in the Code of Car Hire Rules, from 1971 through the end of 1994. |
| 5/69 – 2/71 | Trust Officer, Mercantile Bank, Baltimore, MD. Completing work toward law degree. |
| 3/67 – 4/69 | Transportation Engineer/Yard Supervisor, Patapsco & Back Rivers Railroad (Bethlehem Steel), Sparrows Point, MD. |

6/57 - 2/67

Served in various positions (Ass't. Trainmaster, Trainmaster, Transportation Engineer, Supervisor of Train Movement) at 7 major terminals on the Pennsylvania Railroad.

Military Service

5/55 - 5/57

**Infantry Officer, U.S. Marine Corps
(Captain USMCR)**

Education

1955

Penn State University
B.S. Engineering (Mechanical)

1971

University of Maryland
J.D. Law

ATTACHMENT 1

THE OFFICIAL INTERMODAL EQUIPMENT REGISTER

E-6

TRAILER AND CONTAINER SERVICE & REPORTING RULES

PREFACE

The Rules contained herein do not foreclose subscribers from entering into other agreements which may be contrary to these rules.

DEFINITIONS

Trailer—A vehicle used in trailer on freight car service constructed for the transport of commodities from point to point via highway, equipped with suitable permanently affixed undercarriage and wheels and with a device for coupling to self-powered tractor for movement.

General Service Trailer—A trailer or container welded to a chassis, when designated by the owner in the AAR UMLER file.

General Service Container—A container mounted and secured on a chassis or bogie, when designated by the owner in the AAR UMLER file.

Container—A unit for transporting commodities in trailer or container on freight car service from point to point, constructed in such a manner that it may be mounted and secured on a car, chassis or bogie for the purpose of such movement.

Chassis-Bogie—A wheel assembly constructed to accept mounting of containers.

TOFC-COFC Service—TOFC Service—Transportation involving the movement of trailers and/or containers mounted on chassis/bogies on freight cars. COFC Service—Transportation involving the movement of containers without chassis/bogies on freight cars.

Owner—The person having title to equipment described herein or entitled to exercise the rights and privileges of title. (Note: A.A.R. assigned reporting marks shall be displayed on the equipment and the person whose reporting marks appear on the equipment shall be deemed to be the owner for the purpose of applying these rules.)

Subscriber—A party signatory to the Trailer and Container Service and Reporting Rules Agreement.

Home Trailer, Container or Chassis—A trailer or container or chassis bearing railroad marks in the possession of the holder of such marks.

Foreign Trailer, Container or Chassis—A trailer, container or chassis bearing railroad reporting marks in the possession of a party other than the holder of such marks.

Home Road—The railroad whose reporting marks are displayed on a particular trailer, container or chassis.

Junction—An agreed location where two or more subscribers interchange trailers, containers or chassis.

Rail Controlled Trailer-Container—A trailer or container for which the handling carrier has use charge responsibility.

Railroad Reporting Marks—Are reporting marks assigned to a railroad by the Secretary, Customer Operations Division, Association of American Railroads.

CODE OF TRAILER & CONTAINER SERVICE RULES

SECTION 1 - TRAILERS

RULE 1-Handling of General Service Trailers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such trailers, empty rail controlled trailers designated as General Service may be loaded without regard to ownership, destination or route unless:

- (a) Ordered home for inspection, maintenance, licensing or such other reason as the owner (lessor) may specify. Under this provision a specific trailer may be ordered home no more than once in any 12-month period.
- (b) Trailers moved empty under (a) may be:
 1. Delivered to home road (direct connection).
 2. Delivered empty to the road from which received under load, at the junction where received.

RULE 1A-Handling of General Service Trailers

Empty rail controlled trailers designated as General Service not handled in accordance with Rule 1 may be:

1. Delivered empty to the home road at any junction.
2. Delivered empty to the road from which received under load, at the junction where received.
3. Delivered empty to any road requesting General Service Trailers at a junction mutually agreed (direct connection), where the delivering carrier has ascertained that the requesting carrier has an agreement with the owner to accept such trailers.

EXCEPTIONS

- (4) A railroad must not deliver an empty trailer bearing its own reporting marks to another railroad unless the receiving railroad has requested equipment consistent with Rule-1-A-3.
- (5) A railroad must deliver an empty trailer to the owner if the city where it was received loaded is the same city that the interchange exists for the empty reverse route authority.
- (6) The receiving carrier may request the dates establishing the reverse route authority from the delivering carrier. The delivering carrier must furnish dates requested within 5 days.

RULE 2-Handling of Non-General Service Trailers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such trailers, empty foreign trailers not designated as General Service shall, unless otherwise mutually agreed, be:

- (a) Loaded to or via home road.
- (b) Loaded in the direction of home road.
- (c) Delivered to home road (direct connection).
- (d) Delivered empty to the road from which received under load, at the junction where received.

RULE 3-Steamship, Ferry, Barge or Air Restrictions

Foreign trailers/containers must not be loaded via or delivered empty to a water carrier for transportation by water or to an air carrier for transportation by air except for transportation in interstate commerce by common carriers between points within the continental United States (not including Alaska and Hawaii) without permission of the owner filed with the A.A.R. Interchange Services Division.

RULE 4-Interchange

Unless otherwise agreed to by roads involved, trailers shall be considered as having been delivered (interchanged):

- (a) When car on which trailer is loaded is placed upon a track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by proper data for forwarding and delivery and accepted by inspector of receiving road.
- (b) When trailer interchanged by highway is placed in a yard or parking space agreed upon and designated as a point of interchange for such deliveries between carriers, and accompanied or preceded by proper data for forwarding and delivery together with inspection form prescribed in the AAR TOFC/COFC Interchange Rules.
- (c) A receiving carrier refusing an empty trailer moving in highway interchange in compliance with Service Rules 1, 1A and 2 shall be liable to the delivering carrier for cartage expense incurred for each trailer so refused.

NOTE: When possible, the delivering document accompanying empty trailers is to reference the date establishing the reverse route authority.

SECTION 2 - CONTAINERS

RULE 1-Handling of General Service Containers

When the origin carrier has ascertained that all carriers involved in the route have existing agreements with the owner to accept such containers, empty rail controlled containers designated as General Service may be loaded, without regard to ownership, destination or route, unless:

- (a) Ordered home for inspection, maintenance, licensing or such other reason as the owner (lessor) may specify. Under this provision, a specific container may be ordered home no more than once in any 12-month period.
- (b) Containers on chassis-bogies moved under (a) may be:
 1. Delivered to home road (direct connection).
 2. Delivered empty to the road from which received under load, at the junction where received.