

COPY

Chicago, July 27, 1909.

✓ Mr. H. H. Field:

To Heads of Departments:

Please note the following opinion of General Solicitor Hanson as to the free transportation which can be extended by this Company and Wells Fargo & Company under the present rulings of the Interstate Commerce Commission.

"According to my understanding of the matter, Mr. Dudley Evans' letter correctly states the rulings of the Interstate Commerce Commission as to the issuance of passes to the officers, agents and employes of express companies and their families, and the free carriage of material, etc., as between the express company and the railway company.

"By the ruling of the Interstate Commerce Commission of May 11, 1909, in the matter of contracts of express companies for the free transportation of their men and material over railways, a railway company may lawfully transport the men and supplies of an express company without reference to any tariff provision, when employed or used in the business of the express company upon the lines of the railway itself; and in the same manner an express company may lawfully transport the packages of a railway company, without reference to its tariff rates.

"You will observe that the free transportation of material and packages is limited to the railway upon which the particular express company has a contract to do business. Under this ruling an express company may not lawfully transport packages for a railway company off, from, and beyond the lines of that railway; and likewise, a railway company may not lawfully transport the supplies, such as wagons, trucks, etc., of an express company over its lines when the same are for use at points beyond or off the lines of its railway."

This reduces the free transportation contemplated in the contract. Under this decision, express service to points beyond the line of this company should be used only when necessary.

Note particularly that the C.M. & St.P. and C.M. & P.S. are separate and distinct corporations, and Wells Fargo & Company cannot handle the business of either company over the line of the other except at regular rates.

E. D. Sewall,

Vice-President.

See my opinion on agreement

H.H.F.

This Agreement, Made and entered into this first day of April, A. D. Nineteen Hundred and Nine, by and between the CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY, a corporation of the State of Washington, hereinafter called the "Railway Company," and WELLS, FARGO & COMPANY, a corporation duly organized and existing under and by virtue of the laws of the then Territory (now State) of Colorado, hereinafter called the "Express Company;" WITNESSETH:

THAT the Railway Company controls and is now operating a line of railroad from Mobridge, South Dakota, to Butte, Montana, and is constructing a line of railroad from Butte, Montana, to Seattle and Tacoma, Washington, which line of railroad, when completed, will be operated by the Railway Company as a through line from Mobridge, South Dakota, to Seattle and Tacoma, Washington.

THAT the parties hereto deem it to their mutual benefit and advantage that an agreement be entered into between them providing for the conduct of an express business over said lines of railroad.

NOW, THEREFORE, in consideration of the payments, hereinafter specified to be made by the Express Company, and of their mutual and dependent covenants and agreements herein set forth, the parties hereto agree as follows:

ARTICLE I.

Section 1. It is mutually agreed that the lines of railroad now operated by the Railway Company, to which this contract applies, are set forth and fully described in the schedule hereto attached, marked "Exhibit A" and made a part hereof, and that the terms hereof shall apply forthwith to the portion of said lines already completed, and to such portions thereof under construction as soon as completed, and shall also apply to lines of railroad hereafter, during the term hereof, in any manner acquired by the Railway Company, if, and as soon as conditions will enable it to lawfully grant to the Express Company the right to conduct an express business over the same. It being agreed that the Railway Company shall and will terminate, as soon as it may lawfully do so, contracts between other express companies and such lines of railroad hereafter acquired by it.

Section 2. It is further mutually agreed that, subject to the terms hereof, the express business to be carried on under this contract, is understood to mean such express business as is commonly carried on by express companies at the present time, or as may be carried on by them during the term hereof.

Section 3. Subject to the provisions, conditions, restrictions and limitations herein contained, the Railway Company hereby agrees to transport or cause to be transported over all the lines of railroad aforesaid, in express cars attached to its regular passenger, mail and mixed trains (except "Limited" trains carrying passengers, baggage or mail only), so often as said trains shall run, to and from all stations at which said trains make regular stops, the messengers, safes, packing trunks and express matter of the Express Company; provided, however, that only such messengers as accompany the express matter and valuables of the Express Company shall be carried under the terms of this Section.

Section 4. The Railway Company agrees that it will, so far as it may lawfully do so, transport upon its freight trains, over the lines of railroad embraced in this contract, and without cost to the Express Company, the wagons, horses, provender, safes and other material to be used by the Express Company in the transaction of its business at the various points on the lines embraced in this contract; and will likewise transport over said lines, upon written application of duly authorized officers of the Express Company, such persons as it may become necessary to send over said lines upon the business of the Express Company embraced in this contract.

Section 5. The Railway Company further agrees that it will procure the execution of a contract between the MONTANA RAILROAD COMPANY and the Express Company, the terms of which shall, in all respects, be similar to the terms hereof.

ARTICLE II.

Section 1. The Railway Company agrees that it will not, during the term hereof, so far as it can lawfully refrain from so doing, carry on any express business on its own account, nor permit any of its agents or employes to carry on such business, nor will it grant to any person or persons, corporation or association any express transportation or facilities upon any part of its said lines of railroad, either for through or local traffic. The Railway Company will turn over to the Express Company any such express business which may be offered to it, subject to the terms hereof, to be carried for the mutual benefit of the parties hereto, except the following items, which may at the option of the Railway Company be carried by it in such manner as it may elect, viz:

1. When accompanied by the passenger, owner or person in charge thereof,
 - (a) Corpses, theatrical scenery and belongings;
 - (b) News trunks and property necessary to carry on the usual news business on its trains;

- (c) Hunters' outfits and camp equipment, guns, game and dogs;
- 2. When checked by a passenger over its lines,
 - (a) Passengers' baggage, so-called "extra baggage" and sample cases.
- 3. The following items which the Railway Company reserves the right to carry at its option:
 - (a) Fish in carload lots from Pacific Coast points;
 - (b) Berries in carload lots from points west of Butte, Montana.
 - (c) Imported shipments of silk and curios consigned through from foreign points of origin otherwise than by express;
 - (d) Milk and cream, fish spawn or fry;
 - (e) Goods or material for the use of the Railway Company;
 - (f) Freight handled on passenger trains in cases of emergency arising from causes beyond the control of the Railway Company;
 - (g) Less than carload shipments of fish, veal, poultry, butter, and eggs from branch line to main line points for transfer to refrigerator cars, only when necessary to compete with refrigerator service of other railway companies.

It is understood and agreed that the Express Company shall have the right to accept and transport any or all of the articles above mentioned in this Section. In case the Railway Company is compelled by law to do anything which may take from the Express Company such exclusive privileges as are herein granted, then the Express Company may at its option terminate this contract.

Section 2. Nothing in this contract shall be construed to prevent the transaction of business by other express companies on the trains of other railway companies over and upon such portions of the lines of the Railway Company, party hereto, as may be covered by contracts with such other railway companies for joint ownership, use or operation.

Section 3. For the conveyance of the messengers, safes, packing trunks and express matter in Section 3 of Article 1 hereof specified, the Railway Company agrees to provide cars or car-space and to light and warm the same when necessary; it being agreed that the maximum weight to be carried on any of said cars shall not exceed that which, in the judgment of the Railway Company, is compatible with safety. If, in the judgment of the parties hereto, the necessities of the business require enlarged facilities or additional service in order to properly accommodate the same, the Railway Company will furnish an additional car or cars, or run special trains, at such intervals and on such schedule time as may be mutually agreed upon.

ARTICLE III.

Section 1. The Railway Company further agrees that it will accord to the Express Company free and unrestricted access to the premises of the Railway Company, and to its trains, for the purpose of loading, unloading and transferring express matter, and, so far as it can conveniently do so, will permit the Express Company to use, free of charge, a portion of its station houses for the reception, safe keeping and delivery of express matter, and will allow the Express Company reasonable time to perform its service in connection with the business embraced in this agreement. Provided, however, that the Express Company will, at its own expense, load, unload and handle all express matter expeditiously and without unnecessary delay to the trains of the Railway Company.

Section 2. The Railway Company further agrees that whenever it is unable, for any reason, to permit the Express Company to use a portion of its station house at any point, it will, whenever it has sufficient space upon its right-of-way or other property, at or adjoining such station, lease to the Express Company, during the term hereof, where, in the judgment of the Railway Company it can be done without detriment to its interests, without additional charge, such ground space as the Express Company may desire for the erection and maintenance of a suitable building, according to plans to be first approved by the Railway Company, for the reception, safe keeping and delivery of express matter; and will permit the Express Company, in such case, to maintain such buildings, so erected, during the term of this contract, and to have free access thereto with wagons and other conveyances, for the transportation of its property and express matter to and from said buildings and the stations and trains of the Railway Company. The Express Company shall have the right to remove its buildings and property from such leased premises upon the termination or during the term of such lease, unless otherwise disposed of by mutual agreement; and shall and will restore such leased premises to their former state, or as good a condition.

Section 3. The Railway Company further agrees that it will use its influence to secure for the Express Company at a reasonable rental, convenient and adequate space and facilities, if desired, for the transaction of its express business in Union Depots with which the Railway Company has or may have contracts or arrangements for terminal facilities, during the existence of this contract.

ARTICLE IV.

Section 1. The Railway Company further agrees that, so far as it is permitted to do so, without additional expense, under the terms of existing or future contracts with any telegraph company, it will transmit, free of charge, over all telegraph lines operated by it along the lines of railroad embraced in this contract, all business messages of the Express Company; and will endeavor to secure for the Express Company like privileges over telegraph lines which now connect or may hereafter connect with said lines of telegraph; and the Express Company agrees that it will, and it does hereby release the Railway Company from and indemnify it against all liability for claims and actions of

every nature, caused in any manner by errors or delays in the transmission of such messages, or by failure to forward or deliver the same; but this release shall not prevent the Railway Company from enforcing, for its own benefit, or for the benefit of the Express Company, any liabilities of persons or corporations not parties to this agreement.

ARTICLE V.

Section 1. The Railway Company agrees that the Express Company shall have the right, during the term hereof, to employ the agents and servants of the Railway Company as its own agents and servants, when such employment will not, in the opinion of the Railway Company, be to the detriment of its own business; provided, however, that in no case shall the Railway Company be in any way responsible for any loss, cost or damage, caused by the negligence, or malfeasance, of such agent or servant when so acting as the agent or servant of the Express Company.

ARTICLE VI.

Section 1. The Express Company agrees that it will, during the term hereof, carry on an express business over the lines of railroad embraced in this contract, and that it will pay to the Railway Company, as provided for in this Article, a sum equal to..... of the gross earnings derived from such express business; and that in computing such gross earnings, the earnings on all express matter destined to or shipped from points beyond the terminus of any of the lines of railroad aforesaid shall be accounted for on a rate pro rata of the entire through charge, based on the local merchandise rates to and from the point of transfer to or from said lines.

Section 2. The Express Company agrees that it will not, so far as it may lawfully refrain from so doing, charge less than.....times the railroad freight rates on the same class and character of business, except with the permission of the Railway Company; provided, however, that the Express Company shall have the right to meet the rates of its competitors.

Section 3. The Express Company further agrees that as soon as practicable after the close of each month, but not later than ninety (90) days thereafter, it will make and transmit to the Railway Company a statement of the business transacted during said month, and accompany said statement with a remittance in payment of the balance shown to be due by such statement. And it further agrees that it will furnish to the Railway Company such other statements, reports and information as the Railway Company may reasonably require regarding the business embraced in this contract, and the Railway Company shall, through its proper officers, have the right at any and all times to examine the books and accounts of the Express Company relating to such business, for the purpose of determining the correctness of the statements so rendered.

Section 4. It is mutually agreed that after through passenger service from Mobridge, South Dakota, to Seattle and Tacoma, Washington, shall have been established and maintained for one (1) year, a minimum compensation per mile per annum, to be paid by the Express Company to the Railway Company for each succeeding year of the life of this contract, shall be agreed upon and be thereafter paid by the Express Company to the Railway Company the same as if it had been originally fixed and determined in this contract.

The term "through passenger service" as used in this Section shall be held and construed to mean a passenger service consisting of not less than the equivalent of two (2) through passenger trains daily between Mobridge, South Dakota, and Seattle and Tacoma, Washington.

ARTICLE VII.

Section 1. The Express Company agrees that it will receive and carry, over any and all the lines of railroad herein mentioned, and also over the lines of the Chicago, Milwaukee & St. Paul Railway Company, without cost to the Railway Company, so far as it may lawfully do so, all money and other valuables and other parcels and packages belonging to the Railway Company, or pertaining to its business; that in and about such carriage it will exercise due diligence and care, and will deliver such money, valuables and other packages as addressed, at all proper places of delivery on said lines of railroad, or at the termini thereof; it being agreed that the Railway Company shall assume the risk of all loss or damage of or to such money, valuables and other packages, except the same be caused by theft, carelessness, fault or dishonesty of the employes of the Express Company.

Section 2. The Express Company further agrees that it will likewise carry, so far as it may lawfully do so, packages not exceeding twenty (20) pounds each in weight over other lines of railroad upon which it is conducting an express business, provided such other lines do not object, it being agreed that the liability of the Express Company in such cases is subject to the same limitations as in Section 1 of this Article set forth.

ARTICLE VIII.

Section 1. The Express Company further agrees that it will, and it does hereby, except as to packages carried for the Railway Company, as provided for in the next preceding Article, assume all risk of loss of and damage to its own property, and to all property, express matter and valuable packages carried under the provisions of this contract, whether the same be caused by the negligence of the Railway Company, its employes, or otherwise, and including property which has been transported or has been delivered at stations along the lines of the Railway Company for the purpose of being transported by the Express Company, while it is at any such station or on the grounds of the Railway Company, and the Express Company further agrees that it will save and hold harmless the Railway Company from all claims, demands, judgments, and actions, and from all costs and expenses on account thereof.

Section 2. The Express Company further agrees that it will, and it does hereby assume, all risk of injury to or death of its officers, agents, or employes while engaged in the transaction of the business of the Express Company on the lines of railroad or on the property of the Railway Company, or while such officers, agents, or employes are traveling on any of the trains of the Railway Company, whether such injury or death is caused by the negligence of the Railway Company, or its employes, or otherwise; and the Express Company agrees that it will save and hold harmless the Railway Company from all claims, demands, causes of action, costs and expenses on account thereof.

ARTICLE IX.

Section 1. It being to the mutual interest of the parties hereto that each shall co-operate with the other in securing, stimulating, fostering and increasing the business, the Railway Company agrees that it will maintain the express cars, accommodations, and facilities herein provided for, in first-class serviceable condition, and that it will letter such cars with the name of the Express Company, and will maintain a railway service of the first class, and such as will fairly enable the Express Company to compete on equal terms, so far as practicable, as to time, facilities and privileges, with its competitors.

Section 2. The Express Company agrees that it will, at all times during the term hereof, make every exertion to aid and further the interests of the Railway Company; and that it will, to the best of its ability, perform all the duties of an express company in connection with the business embraced in this contract.

ARTICLE X.

Section 1. In the event of any misunderstanding or disagreements as to the terms and conditions of this contract, the matter in dispute shall be submitted to arbitration, and each party shall select one disinterested arbitrator, and the two so selected shall choose a third.

The party desiring to submit the question to arbitration shall give twenty (20) days' notice in writing to the other party, stating the matter of difference and the name of the person selected by it as arbitrator. If the party upon whom such notice is served shall not, within twenty (20) days of service, name a person to act as arbitrator, then the party serving the notice may select a second disinterested arbitrator, and the two so selected shall select a third; and the said arbitrators shall proceed at once to hear and determine such matter of difference, and shall give to each of the parties hereto reasonable notice of time and place of hearing, of which the arbitrators shall be the judges; and the determination of such arbitrators, or a majority of them, shall be made within thirty (30) days after said hearing, and a copy thereof shall be delivered to each of the parties hereto; and the said parties hereby mutually agree that such decision shall be conclusive upon them, and upon each of them, in reference to said matter of difference.

ARTICLE XI.

Section 1. This agreement shall take effect on the First day of May, A. D., Nineteen Hundred and Nine (1909) and shall continue in force and be binding upon the parties hereto, their successors and assigns, until the First day of May, A. D., Nineteen Hundred and Nineteen (1919), and thereafter until either of the parties hereto shall give to the other six (6) months' notice in writing of a desire to terminate the same.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed in duplicate by their proper officers thereunto duly authorized, the day and year first above written.

CHICAGO, MILWAUKEE AND PUGET SOUND RAILWAY COMPANY,

By E. D. SEWALL, Its Vice-President.

{ CORPORATE }
SEAL. }

Attest:

E. W. ADAMS, Assistant Secretary.

WELLS, FARGO & COMPANY,

By DUDLEY EVANS, Its President.

{ CORPORATE }
SEAL. }

Attest:

A. W. ZIMMERMANN, Secretary.

Form Approved:

J. R. DICKINSON, Ass't General Solicitor.

EXHIBIT "A."

LINES OF RAILROAD OPERATED BY THE
CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY.

Operated Exclusively:	MILES.	MILES.
Mobridge to Harlowton Junction.....	534.4	
Lombard to Butte.....	91.5	
B. A. & P. Connection 1 mile west of Durant, Mont., to Maple Valley, Wash.	620.2	
	1,246.1	1,246.1
Operating Rights covering both through and local business:		
Black River Junction to Tacoma.....	28.3	
MONTANA RAILROAD, Harlowton Junction to Lombard.....	89.0	
	117.3	117.3
Operating Rights covering through business only:		
BUTTE, ANACONDA & PACIFIC RAILWAY, Butte Jct. to 1 mile west of Durant.....	13.6	
COLUMBIA & PUGET SOUND RAILROAD, Maple Valley to Seattle.....	22.5	
	36.1	36.1
TOTAL		1,399.5