

**THE WESTERN PACIFIC RAILROAD COMPANY**

WESTERN PACIFIC BUILDING, 526 MISSION STREET  
 SAN FRANCISCO, CALIFORNIA 94105  
 TELEPHONE: (415) 982-2100

WALTER G. TREANOR  
 VICE PRESIDENT-LAW

July 31, 1979

KATHERINE M. GRIFFIN  
 GENERAL ATTORNEY  
 MICHAEL P. HEARNEY  
 EUGENE J. TOLER  
 ATTORNEYS

File: 6116-68

RECORDATION NO. *9426 B* Filed 1425

*3-218A042*

DELIVER TO:

AUG 6 1979 10 40 AM

Honorable Agatha L. Mergenovich  
 Secretary  
 Interstate Commerce Commission  
 Washington, DC 20423

AUG 06 1979  
 Fee \$ *10.00*  
 ICC Washington

Dear Secretary Mergenovich:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Conditional Sale Agreement dated as of May 1, 1978 between each of Whitehead & Kales Company, 58 Haltiner Street, River Rouge, Michigan 48218, S.T.I. of Louisiana, Inc., 950 Home Savings Building, 1006 Grand Avenue, Kansas City, Missouri 64106, and Unarco Industries, Inc., 332 South Michigan Avenue, Chicago, Illinois 60604 as Vendors and Assignor as Vendee. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Conditional Sale Agreement	May 1, 1978	9426
Agreement & Assignment	May 1, 1978	9426-A

The document relates to the following railroad equipment:

- 24 70-ton flat cars (rebuilt) by STI of Louisiana, Inc.
- 75 70-ton insulated box cars (rebuilt) by STI of Louisiana, Inc.
- 136 Auto racks built by Whitehead & Kales Company
- 20 70-ton flat cars rebuilt by Unarco Industries, Inc.

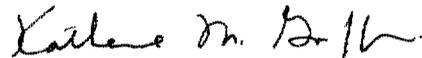
FREE OPERATION DR.  
 T.C.C.  
 AUG 6 10 55 AM '79  
 RECEIVED

Identifying marks: The words "Bank of America  
NT & SA, Agent, Owner" printed on each side of  
each unit.

Also enclosed is this Company's voucher in the sum  
of \$10.00 payable to the Interstate Commerce Commission  
being the prescribed fee for filing and recording the fore-  
going document.

Please return the original and counterpart with  
recording data stamped thereon to the representative of  
the office of Kunkel Transportation Services, Inc.,  
425 - 13th Street, N.W., Suite 523, Washington, DC 20004,  
who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

KMG:jc

Attachments

AUG 6 1979 - 10 40 AM

INTERSTATE COMMERCE COMMISSION  
ASSIGNMENT AND ASSUMPTION AGREEMENT

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is party to a Conditional Sale Agreement with Whitehead and Kales Company, Surface Transportation International of Louisiana, Inc., and Unarco Industries, Inc., which assigned their interests therein to Bank of America National Trust & Savings Association, effective May 1, 1978, recorded with the Interstate Commerce Commission on June 6, 1978, Recordation No. 9426 and No. 9426-A, respectively, hereinafter collectively referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee

has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

### 3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment

of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision

in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation

By *W. Schumbo, Jr.*  
Its Sr. Vice President Finance

Attest *H. D. Brew*  
Its SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly named Newrail Company, Inc.)

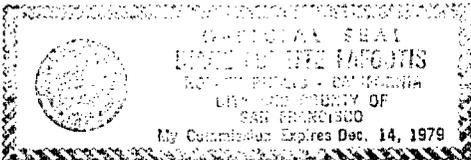
By *W. Schumbo, Jr.*  
Its Sr. Vice President Finance

Attest *H. D. Brew*  
Its SECRETARY

STATE OF CALIFORNIA )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

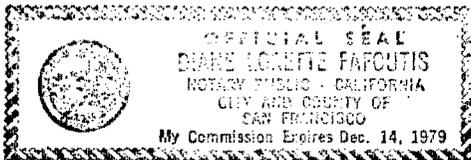


Diane Lorette Lafoutis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Lafoutis  
Notary Public in and for said State

I, DIANE LORETTE FAFOUTIS, a Notary Public in and  
for the City and County of San Francisco, State of California,  
do hereby certify that I have compared the foregoing document  
with the original and that it is a true and correct copy  
in all respects.

*Diane Lorette Fafoutis*  
Notary Public

