

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

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

RECORDATION NO. *8304-A* Filed 1425

August 8, 1979

AUG 13 1979 - 11 40 AM

File: 6116-61

9-225A041

DELIVER TO: INTERSTATE COMMERCE COMMISSION

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

No. *8304*
 Date **AUG 13 1979**
 Fee \$ *10.00*
 ICC, Washington, D. C.

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 Equipment Lease Agreement dated as of August 15, 1975 between Seattle First National Bank, P.O. Box 3586, Seattle Washington 98124 as Lessor and Assignor as Lessee. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Equipment Lease Agreement First Amendment to Equipment Lease Agreement	August 15, 1975	8304
Second Amendment to Equipment Lease Agreement	August 15, 1975	8304-A
Equipment Lease Agreement	August 15, 1975	8304-B

The document relates to the following railroad equipment:

- 45 70-ton rebuilt box cars rebuilt by Unarco Industries, Inc; AAR mechanical designation XLI; Road number WP 64951-64995, both inclusive.

6116-61

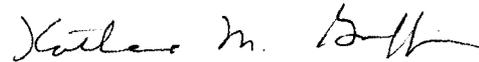
0313020

Identifying marks: The words "Property of and leased from Seattle-First National Bank subject to an agreement filed under the Interstate Commerce Act 20C" 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 foregoing document.

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

Yours very truly,



Katherine M. Griffin

KMG:jc

Attachments

AUG 13 1979 - 11 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 an Equipment Lease Agreement with Seattle First National Bank as lessor, dated as of August 15, 1975, recorded with the Interstate Commerce Commission on August 28, 1975, Recordation No. 8034, which was supplemented by a First and Second Amendment to Lease, dated effective August 15, 1975, recorded with the Interstate Commerce Commission on February 2, 1976, Recordation No. 8034-A and No. 8034-B, 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 to 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. H. Kumbo, 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.)

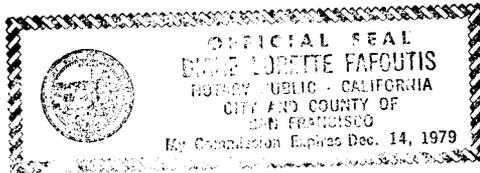
By *W. H. Kumbo, Jr.*
Its Sr. Vice President - Finance

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.

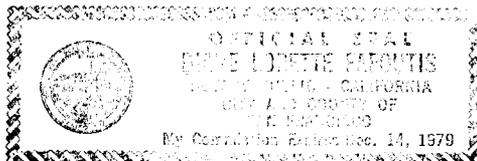


Diane Lorette Fafoutis
Notary Public in and for said State

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 Fafoutis
Notary Public in and for said State