

**EMPLOYER STATUS DETERMINATION
Regional Rail, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Regional Rail, LLC (RR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA). The status of RR as an employer under the Acts has not been previously considered.

Information about RR was provided by Mr. Robert C. Parker, President and CEO of RR¹. According to Mr. Parker, RR was formed on July 24, 2007, and began operations on July 25, 2007. RR reportedly has no employees, and is described as a holding company and investment vehicle. RR is currently the parent company of Middletown & New Jersey Railroad, LLC (Middletown)², and East Penn Railroad, LLC, an employer covered by the Acts (B.A. No. 3394). Mr. Parker explained that RR has looked at a number of opportunities outside of the railroad industry, and recently made an offer to acquire a logistics company. In Surface Transportation Board (STB) Finance Docket No. 35228, decided March 12, 2009, the STB authorized the control of Middletown by RR.

No individual owns a controlling interest in both RR and a rail carrier, however Mr. Parker serves as President and CEO of RR, as well as Middletown and East Penn Railroad, LLC. Mr. Alfred M. Sauer, one of the controlling members of RR serves as the Vice President and CCO of RR, Middletown, and East Penn Railroad, LLC.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record shows that RR is clearly not a rail carrier employer under the definition of employer in subparagraph (i) quoted above. This conclusion, however, leaves open the question as to whether RR can be considered an employer under the definition in subparagraph (ii). Under section 1(a)(1)(ii), a company is an employer if it

¹ Mr. Parker is also President and CEO of Middletown & New Jersey Railroad, LLC.

² The employer status of Middletown & New Jersey Railroad, LLC is considered separately from this decision.

meets **both** of two criteria: if it is owned by or under common control with a rail carrier employer and if it provides "service in connection with" railroad transportation. If it fails to meet either condition, it is not a covered employer within section 1(a)(1)(ii). In considering questions of coverage within the meaning of section 1(a)(1)(ii), courts have generally looked to the type of service being provided, the amount of work being performed for the railroad affiliate, and the amount of work being performed for the railroad industry.

The evidence of record shows that RR is under common control with a rail carrier employer. Mr. Parker serves as President and CEO of RR, as well as Middletown and East Penn Railroad, LLC. Mr. Alfred M. Sauer, one of the controlling members of RR serves as the Vice President and CCO of RR, Middletown, and East Penn Railroad, LLC. Accordingly, the Board finds that RR is under common control with its rail carrier subsidiaries, Middletown and East Penn.

The question still remains whether RR performs a "service in connection with" railroad transportation. Section 202.7 of the Board's regulations (20 CFR 202.7) defines service in connection with railroad transportation as follows:

The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

As stated previously, Mr. Parker advised that RR acts solely as a holding company and investment vehicle. The evidence of record indicates that RR is not performing a service in connection with railroad transportation. Accordingly, it is determined that Regional Rail, LLC, as it operates at the present time, is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

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