B.C.D. 01-26

**EMPLOYER STATUS DETERMINATION**
**Kauri, Inc.**

MAR 14 2001

This is the determination of the Railroad Retirement Board concerning the status of Kauri, Inc., as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Kauri is a holding company which was incorporated on February 17, 1995. Kauri has no employees and provides no services. It owns 93 percent of StatesRail, Inc., which in turn directly and indirectly owns a number of carriers, including The Arizona Eastern Railway Company (B.A. No. 3766), The Eastern Alabama Railway (B.A. No. 5346), The Kyle Railroad Company (B.A. No. 3756), The San Joaquin Valley Railroad Company (B.A. 3780), and SWKR Operating Company, Inc. (B.A. No. 2761). On December 19, 1997 (B.C.D. 98-1), the Board held StatesRail not to be covered under the Railroad Retirement and Railroad Unemployment Insurance Acts for the reason that it was not under common control with these carriers.

There is no evidence that Kauri is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether Kauri is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it provides "service in connection with" rail transportation and if it is owned by or under common control with a rail carrier employer. If it fails to meet either criterion, it is not a covered employer within section 1(a)(1)(ii).

A majority of the Board has previously determined that StatesRail is not under common control with StatesRail's rail subsidiaries. Therefore, a majority of the Board, Labor Member dissenting, finds that Kauri, StatesRail's parent company, could not be under common control with those subsidiaries. There is no evidence that it is affiliated with any carriers which are not direct or indirect subsidiaries of StatesRail. In addition, Kauri is not providing any services.

Accordingly, the Board holds that Kauri is not an employer under the Railroad Retirement or Railroad Unemployment Insurance Acts.

Cherryl T. Thomas

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V. M. Speakman, Jr.

V. M. Speakman, Jr. (Dissenting in part)

Jerome F. Kever

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