B.C.D. 05-41

**EMPLOYER STATUS DETERMINATION** AUG 0 9 2005
**Kiski Junction Railroad, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Kiski Junction Railroad, 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.).

Berkman Rail Services was held to be a carrier employer under the Acts effective July 13, 1995 (B.A. 4273)[1]. See B.C.D. No. 97-20, issued February 5, 1997. A copy of a contract between Berkman and Kiski shows that on April 14, 2005, Kiski purchased the rail line from Berkman Rail Services[2]. In Surface Transportation Board Finance Docket No. 34681, Kiski filed a notice of exemption to acquire and operate approximately 5.2 miles of rail line owned by Berkman and denominated the Schenley Industrial Track.

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; * * *.

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 establishes that Kiski became a carrier operating in interstate commerce. Accordingly, it is determined that Kiski Junction Railroad, Inc., is an employer within the meaning of

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[1] The continued status of Berkman under the Acts is currently being examined.
[2] This line was the basis for coverage of Berkman under the Acts.

section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 14, 2005, the date as of which the rail line was transferred to that company.

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