

**EMPLOYER STATUS DETERMINATION
Pennsylvania & Southern Railway, LLC (PSR)**

This is a determination of the Railroad Retirement Board concerning the status of Pennsylvania & Southern Railway, LLC (PSR) 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 PSR under the Acts has not previously been considered.

Information about PSR was furnished by its President, Eyal Shapira. PSR is 100% owned by Eyal Shapira. Mr. Shapira also owns a controlling interest in the Raritan Central Railway, LLC (RCRY). RCRY was determined to be a covered employer by Board Coverage Decision 02-01 which was issued January 16, 2002. PSR began operations on February 1, 2004.

The Surface Transportation Board (STB) has previously decided that PSR is a common carrier railway in a decision dated February 12, 2004 which was provided by Mr. Shapira after a follow-up inquiry by Board. PSR provides switching services to the Cumberland Valley Business Park and the Letterkenny Army Depot in Chambersburg, Franklin County, Pennsylvania. PSR connects to CSX in Culbertson, Pennsylvania. Mr. Shapira notes that PSR does not own any equipment or facilities and that PSR outsources 100% of all locomotive maintenance. Further, the rail lines upon which PSR operates are owned by a non-profit community development corporation. PSR interchanges freight cars between CSX and several industries located within the Cumberland Valley Business Park.

According to Mr. Shapira, PSR has 2 employees; 1 employee works part-time and 1 is an independent contractor. Both individuals only work 16 hours per week.

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;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that PSR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Pennsylvania & Southern Railway,

LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective February 1, 2004, the date on which it began operations and as of which its first employee was first compensated. [Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever