

EMPLOYER STATUS DETERMINATION
Pennsylvania Northeast Regional Railroad Authority

This is the determination of the Railroad Retirement Board concerning the status of Pennsylvania Northeast Regional Railroad Authority (PNRRA) 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). PNRRA has not heretofore been ruled to be an employer under the RRA and RUIA.

Information provided by Mr. Lawrence C. Malski, President, PNRRA, indicates that PNRRA was created on May 30, 2006. Pursuant to the exemption authority set forth in Surface Transportation Board (STB) Finance Docket No. 34846, decided May 26, 2006, PNRRA acquired approximately 65 miles of rail line in Lackawanna, Monroe and Wayne Counties, Pennsylvania. Mr. Malski stated that PNRRA is a non-profit, government municipal authority whose purpose is to preserve rail lines facing abandonment or liquidation in northeast Pennsylvania. PNRRA has two employees and has no operating railroad assets. By October 8, 2008, PNRRA owned 82 miles of rail lines in Lackawanna, Monroe, and Wayne Counties, Pennsylvania. See footnote 2 of STB Finance Docket No. 35132. 73 Fed. Reg. 61931 (October 17, 2008).

STB Finance Docket No. 35132, decided October 8, 2008, granted PNRRA an exemption for the acquisition of an additional 10.6 miles of rail line from the Norfolk Southern Railway Company. Footnote 2 of STB Finance Docket No. 35132 also stated that the lines are operated by Delaware-Lackawanna Railroad Co. (DLRR)(B.A. 2260) pursuant to a contract with PNRRA. Mr. Malski stated that PNRRA has an operating agreement with DLRR which provides freight service on the rail line.

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 [45 U.S.C. § 231(a)(1)(i)].

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

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has Surface Transportation Board authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying these criteria to the facts of PNRRA, the Board determines that PNRRA is not a covered employer under the Acts. The evidence of record shows that PNRRA is a non-profit government corporation whose purpose is to preserve rail lines facing abandonment or liquidation in northeast Pennsylvania. Based on these facts, we find that PNRRA does not have as a primary business purpose to profit from railroad activities. With respect to the second part of the Railroad Ventures test, the evidence shows that PNRRA does not operate the rail line and does not have the capacity to operate the rail line inasmuch as PNRRA owns no operating railroad assets. Turning to the third criterion, the record shows that DLRR, a covered employer, is operating on the rail line. The Board, therefore, finds that PNRRA is not a carrier under the test set out in our Railroad Ventures decision.

Pennsylvania Northeast Regional Railroad Authority is not a rail carrier under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever