

**EMPLOYER STATUS DETERMINATION
Middletown & New Jersey Railroad, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Middletown & New Jersey Railroad, LLC (Middletown) 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.). The status of Middletown under the Acts has not previously been considered.

Information about Middletown was provided by Mr. Robert C. Parker, President and CEO of Middletown¹. According to Mr. Parker, Middletown began operations on April 6, 2009, and has one employee who was first compensated on April 6, 2009. Regional Rail, LLC (RR) is the owner of Middletown².

In Surface Transportation Board Finance Docket No. 35227, decided March 12, 2009, Middletown filed a notice of exemption to acquire and operate 6.5 miles of rail line from Middletown & New Jersey Railway Company, Inc. (MN&J) (B.A. No. 2217). A copy of the Agreement for Sale and Purchase of Business Assets, dated March 31, 2009, has been submitted. Review of that document indicates that Middletown purchased from MN&J all equipment; inventories; all of MN&J's rights under contracts held by MN&J; all accounts receivable; MN&J's business and goodwill; and all real property of MN&J. According to Mr. Parker, Middletown "is the direct successor to the Middletown & New Jersey Railway Co., Inc. as it relates to the ownership and operation of the rail line described above". Middletown interchanges with the Norfolk Southern.

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 establishes that Middletown is a class III rail carrier operating in interstate commerce. Accordingly, it is determined that Middletown & New Jersey Railroad, LLC, became an employer within the meaning of section 1(a)(1)(i) of the

¹ Mr. Parker is also the President and CEO of Regional Rail, LLC.

² The employer status of Regional Rail, LLC is considered separately from this decision.

Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 6, 2009, the date it began operations and first compensated its employee.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board