

**RAIL LINK, INC.**  
**EMPLOYER STATUS DETERMINATION**

This is the decision of the Railroad Retirement Board with respect to the status of Rail Link, Inc. (Rail Link) as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA).

The Interstate Commerce Commission (ICC) in Finance Docket No. 31686 (55 F.R. 25384, June 21, 1990), stated that Rail Link, a "non-carrier," had filed a notice of exemption to continue to control Carolina & Northwestern Railroad, Inc.<sup>1</sup> The ICC decision stated that Rail Link already controlled two non-connecting class III rail carriers, Commonwealth Railway Incorporated, which operates in Virginia, and Carolina Coastal Railway, Inc. which operates in North Carolina.<sup>2</sup> Additional information about Rail Link has been provided by Ms. Bonnie L. Booden, an attorney with the law firm of Slover & Loftus in Washington, D.C.

In a letter dated March 8, 1991, Ms. Booden stated that Rail Link began doing business in April 1987. As of the date of that letter, Rail Link had 70 employees, with compensated service having begun on April 10, 1987. In her letter of October 25, 1990, Ms. Booden stated that no Rail Link employees report to or receive orders from employees of any railroad, nor do Rail Link employees work alongside employees of any railroad. In that letter, Ms. Booden further stated that the same individual, Mr. James W. Benz, is President of Rail Link, Commonwealth Railway, Carolina and Northwestern Railroad, and Carolina Coastal Railway, Inc. In a telephone conversation on May 30, 1991, Ms. Booden indicated that Rail Link owns 5,000 shares of each of the three railroads and that this stock represents one hundred percent of the stock of each of the three railroads.

In her letter of March 8, 1991, Ms. Booden stated that one Rail Link employee performs the "minor" accounting functions, including payroll and disbursement of funds, for all three railroad

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<sup>1</sup> Carolina & Northwestern Railroad, Inc. (B.A. No. 5532) is an employer under the RRA and the RUIA, with service creditable from May 29, 1990 to date. (See Notice 90-119.)

<sup>2</sup> Commonwealth Railway Incorporated (B.A. No. 3418) is an employer under the RRA and the RUIA, with service creditable from August 24, 1989 to date. (See Notice No. 90-14.) Carolina Coastal Railway, Inc. (B.A. No. 5517) is also an employer under the RRA and the RUIA, with service creditable from February 6, 1989 to date. (See Notice No. 89-10.)

## Rail Link, Inc.

subsidiaries. The employee who performs those accounting duties spends approximately 10% of his working time on those duties. There are no contracts or agreements covering those relationships.

According to Ms. Booden, Rail Link provides contract switching service and locomotive leasing to non-railroad industries. Sixty-four of Rail Link's employees perform that service. She stated that none of Rail Link's business is associated with affiliated railroad companies or the railroad industry in general.

Rail Link offers switching service and locomotive leasing to specific paper mills, chemical companies and petrochemical companies, but does not offer service to the general public. Rail Link owns the locomotives being leased. In fact, 67% of Rail Link's assets are attributable to locomotives; Rail Link has no other rolling stock assets. Ms. Booden stated that none of Rail Link's contract switching is performed on trackage or property owned or controlled by a railroad, or on property adjacent to the Carolina Coastal Railway, the Commonwealth Railway, or the Carolina & Northwestern Railroad. She did state, however, in a telephone conversation on May 15, 1991, that Rail Link performs its contract switching services on the property of its clients.

Ms. Booden stated that 70% of Rail Link's revenue is attributable to contract switching and one-half of 1% of its revenue is attributable to locomotive leasing.

Section 1 of the RRA defines the term "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [45 U.S.C. S 231(a)(1)(i) and (ii)].

Section 1 of the RUIA contains essentially the same definition.

Section 202.5 of the Board's regulations provides in pertinent part that:

A company or person is under common control with a carrier, whenever the control . . . of such company or person is in the same person, persons, or company as that by which such carrier is controlled. [20 CFR 202.53.]

Rail Link, Inc.

Based on the information in file, it is clear that Rail Link is not a carrier by rail. The question then becomes whether Rail Link is under common control with a rail carrier and provides service in connection with railroad transportation.

Section 202.7 of the Board's regulations provides in pertinent part that service is considered to be service in connection with railroad transportation:

. . . if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. 20 CFR 202.7].

Section 202.6 of the Board's regulations (20 CFR 202.6) defines casual service as "service [which] is \* \* \* irregular or infrequent \* \* \* or \* \* \* whenever such service \* \* \* is insubstantial."

According to the information provided, Rail Link provides contract switching service and locomotive leasing to non-railroad industries, but it does not provide such service to any of the three railroads which it controls. Counsel for Rail Link has stated that none of Rail Link's business is associated with affiliated railroad companies or with the railroad industry in general.

Although Rail Link performs its contract switching services on the property of its clients, none of its contract switching is performed on trackage or property owned or controlled by a railroad or on property adjacent to the Carolina Coastal Railway, the Commonwealth Railway, or the Carolina & Northwestern Railroad.<sup>3</sup>

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<sup>3</sup> It is noted that according to a news article by United Press International dated April 9, 1990, Rail Link was described as a company which "operates shortline railroads," in particular on a line between Lenoir and Hickory, NC. In a letter dated June 18, 1991, Ms. Booden stated that the article "incorrectly identified Rail Link as a rail carrier operating the Lenoir-Hickory, North Carolina line." Ms. Booden explained that Rail Link's subsidiary, the Carolina & Northwestern Railroad, is the carrier providing the service in question. As stated previously, the Carolina & Northwestern Railroad has been found to be an employer under the Acts.

Rail Link, Inc.

In Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir. 1954), the Court held that the provision of "accounting services, the services of a purchasing department, \* \* \* correspondence and stenographic services \* \* \* bridge and building services, a safety engineer and repairs for its automotive equipment and its general rolling stock" by a carrier's affiliate were services in connection

Rail Link, Inc.

with rail transportation so as to render the affiliate an employer under the Acts. Adams, at 542.

In this case, although Rail Link performs accounting functions, including payroll and disbursement of funds, for all three of its subsidiary railroads, Ms. Booden has classified such functions as "minor." It appears that such classification is justified, since only one of Rail Link's 70 employees spends approximately 10% of his working time on those duties. Therefore, on the basis of the facts as stated above, a majority of the Board concludes that the services in connection with the transportation of passengers or freight by rail which are provided by Rail Link, Inc. to the Carolina Coastal Railway, the Commonwealth Railway and the Carolina & Northwestern Railroad are casual in nature. Cf. Rev. Rul. 84-91, 1984-1 CB 203, which held that the performance of services in connection with rail transportation was casual where the activities in question constituted less than 4% of the related company's activities.

Based on the above determination that Rail Link does not perform a service in connection with rail transportation, the Board does not need to address the issue of common control with a rail carrier.

In conclusion, it is the opinion of a majority of the Board that Rail Link, Inc. is not an employer under the Acts administered by the Board.

Glen L. Bower \_\_\_\_\_

V. M. Speakman, Jr. (Dissenting) \_\_\_\_\_

Jerome F. Kever \_\_\_\_\_