

**EMPLOYER STATUS DETERMINATION**  
**Port Railroads, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Port Railroads, Inc. (PRI), 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).

Information regarding PRI was provided by Fred L. Krebs, General Manager of San Joaquin Valley Railroad Company. According to Mr. Krebs, PRI is responsible for operating trackage which is leased from Southern Pacific Transportation Company. Mr. Krebs also advised that PRI has no employees and all services are performed by San Joaquin Valley Railroad Company, which reports the creditable compensation of the employees involved (B.A. Number 3780).

In Interstate Commerce Commission Finance Docket 32457, PRI filed a notice of exemption to lease and operate approximately 107 miles of rail line in California owned by Southern Pacific, providing services to former customers of Southern Pacific. As mentioned above, PRI has no employees or equipment and contracts with the San Joaquin Valley Railroad Company to provide service.

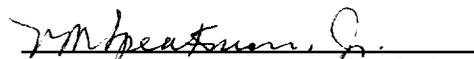
In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, that entity will be found to be a covered employer with respect to the operation of the line it has undertaken. If the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. However, if the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

PRI has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to PRI to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that Port Railroads, Inc. is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

**Port Railroads, Inc.**

Port Railroads, Inc. is reminded to inform the Board of any change in the operation of the rail line in this case.

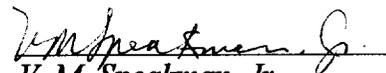
  
Glen L. Bower

  
V. M. Speakman, Jr. (Dissenting  
opinion attached)

  
Jerome F. Kever

**DISSENT OF  
V. M. SPEAKMAN, JR.  
ON EMPLOYER STATUS DETERMINATION  
OF PORT RAILROADS, INC.**

*I take exception to the majority of the Board's decision not to cover Port Railroads, Inc., (PRI) as an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. As an employer, subject to ICC jurisdiction, the Railroad Retirement Act and Railroad Unemployment Insurance Act direct the Board to find PRI covered despite the fact that PRI may have no employees and all services are performed by another railroad carrier. To decide otherwise, as the majority of the Board has done sets a bad precedent and conflicts with current law. For the reasons stated, I dissent.*

  
V. M. Speakman, Jr.

JAN 2 - 1996

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Date