

EMPLOYER STATUS DETERMINATION
Three Rivers Railway Company

This is the determination of the Railroad Retirement Board concerning the status of Three Rivers Railway Company (TRRC) (BA No. 3291) 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 TRRC was provided by various sources. In a letter dated October 13, 1993, from attorney Ronald M. Johnson to the National Mediation Board, Mr. Johnson explained that TRRC and CSX Transportation Company (CSXT) had entered into an agreement under which CSXT would operate the rail properties of TRRC. This agreement required, and received, the prior authorization of the Interstate Commerce Commission (ICC). See, Interstate Commerce Commission Finance Docket No. 32326, service date October 5, 1993. Under the ICC's notice of exemption procedures, the agreement was considered approved as of September 17, 1993. That is the time at which the operating agreement between CSXT and TRRC took effect. According to Mr. Johnson, effective September 17, 1993, when the operating agreement between CSXT and TRRC was put into effect, TRRC ceased to operate as a separate rail carrier. This was confirmed in a letter dated March 17, 1994, from Mr. Maurice J. Robinson, Senior Manager, Payroll Analysis for CSXT, to the Board. According to Mr. Robinson, the last TRRC payroll was paid September 10, 1993. Former TRRC employees were transferred to CSXT.

TRRC retains authority to operate as a railroad and accordingly would still nominally fall within the definition of employer in the RRA and RUIA. However, it does not now operate the line and has no intention of doing so.

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, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and 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. If, however, 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.

Three Rivers Railway Company

TRRC 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 operate TRRC's rail line to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that Three Rivers Railway Company is, effective September 10, 1993, no longer an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.


Glen L. Bower

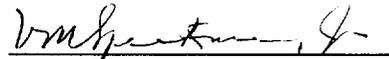

V. M. Speakman, Jr. (Dissenting
opinion attached)


Jerome F. Kever

**DISSENT OF
V. M. SPEAKMAN, JR.
ON EMPLOYER STATUS DETERMINATION OF
*THREE RIVERS RAILWAY COMPANY***

I take exception to the majority of the Board's decision to terminate coverage of Three Rivers Railway Company (TRRC) as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act (the Acts). As a rail carrier under the jurisdiction of the ICC, the Acts direct the Board to find TRRC covered. The fact that TRRC may have no employees but, rather has entered into an agreement under which another rail carrier would operate the rail properties of TRRC, is not relevant to this determination. Its status as a carrier subject to ICC jurisdiction is the determining factor which renders it a covered employer. See Board Coverage Decision 94-112. To decide otherwise, as the majority has done, sets a bad precedent and conflicts with current law.

For the reasons stated, I dissent.



V. M. Speakman, Jr.

FEB 1 - 1995

Date