

EMPLOYER STATUS DETERMINATION
GWI Switching Services, L.P.
Decision on Reconsideration

This is the determination on reconsideration of the Railroad Retirement Board concerning the status of GWI Switching Services, L.P. (GWI) 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).

By letter dated December 28, 1994, GWI was notified of B.C.D. 94-113, wherein a majority of the Board, Mr. Speakman dissenting, found that GWI was not an employer under the RRA and the RUIA. By letter dated December 22, 1995, GWI requested reconsideration of the Board's decision and stated that page 2 of the Board's decision contained a factual error in the following statement:

In this case, GWI does not hold itself out to the public as engaging in the business of transportation of persons or property over the line in question. Rather, it performs switching services over that line only for the one company with which it has contracted.

GWI stated that it has held itself, and continues to hold itself, out as a common carrier of rail services to all parties. GWI explained that although it presently serves one customer, its intent and strategy is to broaden its activities to include additional customers. GWI stated that in order to achieve that goal, it reserved for itself in its operating agreements the right to serve additional customers. GWI pointed out that its Southern Pacific Trackage Rights Agreement does not restrict GWI's operations to Southern Pacific's plastic pellet railcars. That same Agreement allows GWI to operate over approximately 5.2 miles of the Southern Pacific Baytown Branch and Southern Pacific Lafayette Main Line. GWI stated that it believes that the introduction of Burlington Northern into the territory, by means of trackage rights over the Southern Pacific Lafayette Main Line, in connection with pending merger transactions, will offer significant opportunities for expanded service by GWI to a variety of customers in the area.

The basis for the Board's decision in B.C.D. 94-113 was the statement cited by GWI in its request for reconsideration. The additional information provided by GWI indicates that GWI does, in fact, meet the criteria for being a common carrier discussed in B.C.D. 94-113. Since GWI does hold itself out as a common carrier to provide rail services, the Board finds that it does fall within the definition of a carrier employer set out in section 1(a)(1)(i) of the RRA and sections 1(a) and (b) of the RUIA.

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The decision in B.C.D. 94-113 is reversed. The Board finds that GWI became a carrier employer under the RRA and the RUIA effective April 6, 1994, the date on which it began operations.

Original signed by:

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever