

## **EMPLOYER STATUS DETERMINATION A&R Line, Inc.**

This is the determination of the Railroad Retirement Board regarding the status of A&R Line, Inc. (A&R) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA).

Information about A&R was furnished by Mr. Daniel R. Frick, owner and CEO of A&R. According to ICC Finance Docket No. 32693, dated April 20, 1995, and its two supplements, dated May 5, 1995 and June 5, 1995, A&R is a class III line haul carrier which purchased a 27.4 mile stretch of rail line from the Winamac Southern Railway Company (WSRC), BA. No. 3383. The line extends from milepost 25.7 at Winamac, IN, to milepost 5.0 at Kenneth, IN, and then eastwardly to milepost 74.5 at Logansport, IN. A&R has agreed to allow WSRC trackage rights over a portion of that line. A&R commenced operations on September 1, 1995. A&R reports that it currently has no employees. It leases a locomotive from J. K. Line (JK), BA No. 3371, and a crew of employees from JK conducts the A&R operations. A&R states that the JK employees are full-time paid employees of JK and that A&R compensates JK for their services.

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

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad \* \*

\*. [45 U.S.C. §231(a)(1)(i) and (iii)].

Section 1(a) of the RUIA (45 U.S.C. §351(a)) contains essentially the same definition.

The evidence establishes that A&R is a class III rail carrier. Accordingly, it is determined that A&R at least nominally comes under the definition of employer stated above. A&R has no employees and utilizes the employees of another railroad carrier which is an employer under the Acts. That employer reports the employee service rendered to A&R to the Board. A majority of the Board finds that A&R, Inc. is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts. This determination would be reevaluated if A&R hires its own employees or if it begins utilizing a non-employer under the Acts to perform the railroad service A&R is obligated to provide.

---

Glen L. Bower

---

V. M. Speakman, Jr. (Dissenting)

---

Jerome F. Kever

CCCook:SABartholow:ALChaney:alc:ik  
A&R1385.COV