

EMPLOYER STATUS DETERMINATION

Rutland Line, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Rutland Line, Inc. (RLI) 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).

In a letter dated December 19, 1997, Louis A. Harris, Trustee of RLI, stated that RLI would perform originating and terminating service as required to stations formerly served by the Burlington Northern and Santa Fe Railway Company (BNSF) (BA No. 1621) between Aberdeen Line Junction in Minnesota and the North Dakota/South Dakota border. Traffic is interchanged to BNSF or the Red River Valley & Western Railroad (RRVW) (BA No. 3657) at Breckenridge, Minnesota. According to Mr. Harris, RLI has no employees and began operations November 1, 1997.

In Surface Transportation Board (STB) Finance Docket No. 33500, decided November 14, 1997, RLI filed a verified notice of exemption to acquire approximately 23 miles of rail line from the BNSF from milepost 42.67, at Geneseo Junction, North Dakota, to milepost 65.60, at the North Dakota/South Dakota border ("subject line"). The STB decision noted that RLI would enter into an agency agreement with RRVW, whereby RRVW would perform operations in RLI's name and for RLI's account on the subject line. RLI retains the obligation to provide common carrier service on the subject line. RLI also obtained authority for certain operating rights detailed in the STB decision.

In a Service Agreement dated October 30, 1997, RLI granted RRVW an "exclusive agency to conduct rail service over the Rail Line on behalf of Owner [RLI] subject to the right of Owner to direct and supervise Agent [RRVW] in the provision of such rail service." The Agreement provides that RRVW will provide rail service in RLI's name and for RLI's benefit and details the scope of the authority given to RRVW, as well as specific restrictions on RRVW's authority. Insofar as is relevant to a determination of employer status under the RRA and the RUIA, section 4 of the Agreement is particularly noteworthy. That section provides that RRVW will provide crew personnel to operate the train service over RLI's line. However, that section reserves to RLI the right to reject personnel chosen by RRVW, the right to review and approve written rules, regulations and standards applicable to RRVW's provision of rail service and to make any modifications RLI deems appropriate, and the right to monitor (through its designee) the provision of rail service over RLI's rail line by the crew personnel, including, but not limited to, the following:

the right of Owner to: (1) direct, control and supervise the

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daily activities and performance of the crew personnel in the provision of rail service over the Rail Line in accordance with such rules, regulations and standards; and (2) direct Agent to exclude any crew personnel from the provision of rail service over the Rail Line whom Owner determines is not performing in accordance with such rules, regulations and standards.
[Service Agreement, p. 7]

Section 5 of the Agreement, which deals with the standard of maintenance for the rail line, reserves to RLI the right “in its sole discretion” to designate in writing portions of the Rail Line that are to be maintained at a lower standard than the remainder of the line.

In recent past coverage determinations,¹ 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 STB 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 STB 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 STB 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.

¹See, e.g., B.C.D. 97-111, Roaring Fork Railroad Holding Authority, issued December 19, 1997.

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Some, but not all, of the conditions cited in the preceding paragraph exist in this case. First, RRVW is an employer covered by the RRA and the RUIA. Additionally, STB Finance Docket No. 33500 recognized RRVW as the entity which would provide service over RLI's rail line. However, the Service Agreement between RLI and RRVW contains provisions which indicate that RLI is involved in the day-to-day operation of the rail service performed in its name. Under the Agreement, RLI has the right to direct and supervise RRVW in the provision of rail service. RLI also has the right to reject railroad crew personnel chosen by RRVW to operate over the subject rail line and to review and approve rules applicable to RRVW's provision of rail service. Moreover, the Agreement expressly reserves to RLI the right to "direct, control and supervise the daily activities and performance of the crew personnel in the provision of rail service over the Rail Line in accordance with such rules, regulations and standards" which RLI has reviewed and approved. RLI also has the sole right to determine which portions of the rail line will be maintained at a lower standard than the remainder of the line. The Service Agreement provides clear evidence that RLI is involved in the actual operation of the rail service over its rail line.

The Board therefore finds that RLI became a rail carrier employer under the RRA and the RUIA effective November 1, 1997, the beginning date of rail operations over its line of railroad.

V. M. Speakman, Jr.

Jerome F. Kever