

**EMPLOYER STATUS DETERMINATION
Philadelphia Belt Line Railroad Company**

This is the determination of the Railroad Retirement Board concerning the status of Philadelphia Belt Line Railroad Company (PBL) 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). PBL has been in existence since 1889, and was covered as an employer under the RRA (B.A. No. 4342) from the inception of coverage under that Act until August 31, 1992. In Board Coverage Decision No. 97-74, the Board found that PBL had had no covered compensated employees since August 31, 1992, and was chiefly a real estate holding company. PBL owned no equipment with which to operate a railroad, and operations over PBL's lines were conducted by the employees of another railroad carrier, which was an employer under the Acts. According to information provided to the Board at that time, PBL was described as being maintained to insure the non-discriminatory access to the Port of Philadelphia to any railroad. Accordingly, in B.C.D. 97-74, the Board concluded that PBL's status as an employer under the Acts terminated as of August 31, 1992, the date PBL last had an employee.

In December 2006, Mr. Jules Kleinberg, the accountant for PBL, advised the agency that PBL was planning to hire its first employee since 1992 on January 1, 2007. Mr. Kleinberg explained that PBL still does not interchange with any railroad, however CSX, Norfolk Southern and CP access the city of Philadelphia over the PBL right of way. PBL has no operations, either freight or passenger.

In a letter dated January 31, 2007, Mr. James T. Turcich, Assistant Secretary/Treasurer of PBL, advised the RRB that since 1992 when PBL's status was terminated, office operations such as "billings, payments, documentation, etc." were contracted out to another company to handle. Mr. Turcich was hired as an employee of PBL effective January 1, 2007, to handle these activities. Mr. Turcich explained that PBL owns 2.66 miles of track which is leased to and operated by Conrail Shared Assets, the operating part of Conrail¹. Conrail provides all equipment, manpower and services on the line, including maintenance of way. Mr. Turcich explained that PBL shares ownership and right-of-way over 14 miles of track in the city of Philadelphia with all the other railroads in Philadelphia, but does not operate on nor maintain any of this right-of-way. The PBL, according to Mr. Turcich, is still operating "as a holding company".

PBL has no operating personnel; however, the Board of Directors elects a President, a Vice-President/Secretary, a Vice-President/Treasurer, and an Assistant Secretary/Treasurer (Mr. Turcich). With the exception of Mr. Turcich, the

¹ Conrail is an employer covered under the Acts (B.A. No. 1321).

officers serve in a part-time capacity; Mr. Turcich is the only full-time employee. In a letter dated February 15, 2007, Mr. Kleinberg explained that PBL's income is

"entirely from Conrail for the lease of its 2.66 miles of track, billboard sign rentals from billboards leased on the company's property and investment income".

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (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;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this to the facts of PBL, the Board determines that PBL is not an employer covered under the Acts. The Board finds that the primary business purpose of PBL is not to profit from railroad activities; the evidence of record shows that the main purpose of PBL has always been to maintain the non-discriminatory access to the Port of Philadelphia to any railroad. The second and third parts of the Railroad Ventures test are satisfied, inasmuch as PBL owns no rail equipment and therefore does not have the capacity to operate the line, and the subleased railroad operations are conducted by Conrail, a rail carrier employer.

Based upon the information summarized above, and consistent with the holdings in B.C.D. 00-47², it is the decision of the Railroad Retirement Board that Philadelphia Belt Line Railroad Company is not an employer under the RRA and RUIA.

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² In addition, the Board has ruled that in the case of a company which merely has a leasehold interest and contracts with another company to operate rail carrier service over its line, the company which contracts for performance of the rail carrier service is not a rail carrier employer under the Acts. See, B.C.D. 94-38, Lackawanna Railway, Incorporated, citing, *Appeal of Board of Trustees of Galveston Wharves, Board Order 89-74*.