

EMPLOYER STATUS DETERMINATION
Elgin, Joliet and Eastern Railway Company (EJ&E)
Gary Railway Company (GRC)

This is the determination of the Railroad Retirement Board concerning the status of Elgin, Joliet and Eastern Railway Company (EJ&E) and Gary Railway Company (GRC) as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). Information was provided by Mr. Thomas J. Healey, Counsel – Regulatory for Canadian National Railway Company, and Mr. Robert N. Gentile, Associate General Counsel for United States Steel.

The entity previously known as the Elgin, Joliet and Eastern Railway Company (hereafter referred to as “old EJ&E”) has been an employer under the Acts since 1888, using B.A. No. 1309. The old EJ&E was a wholly owned subsidiary of Transtar, Inc., itself an employer covered by the Acts (B.A. No. 9237). Transtar in turn, is a wholly owned subsidiary of United States Steel Corporation, a non-covered entity.

In a transaction approved by the Surface Transportation Board (STB) (*See*, STB Finance Docket No. 35087, decided December 24, 2008) control of a substantial portion of the assets of the old EJ&E was transferred to Canadian National Railway Company (CNR) (B.A. No. 1103) and Grand Trunk Corporation (GTC)¹. To accomplish this transfer, on August 16, 2007, old EJ&E formed a wholly-owned non-carrier subsidiary called EJ&E West. The assets which would eventually be transferred to the control of CNR and GTC were first transferred to EJ&E West. EJ&E West’s capital shares of stock were then transferred to GTC under a Stock Purchase Agreement. The purchase was effective at 11:59 p.m. on January 31, 2009. Upon its first day of operation, February 1, 2009, EJ&E West’s name was changed to Elgin, Joliet and Eastern Railway Company (hereafter “EJ&E”).

According to Mr. Healey, EJ&E employs approximately 53 management personnel (providing general administrative services) and 501 union employees (operating the trains and supporting functions). The first day of service for employees was February 1, 2009. EJ&E is involved with the transportation of freight by common carrier railroad in the States of Illinois and Indiana, on a 198-mile rail line.

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:

¹ GTC is a non-carrier holding company through which CNR controls its U.S. subsidiaries.

- (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;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that EJ&E is a rail carrier operating in interstate commerce. Accordingly, it is determined that Elgin, Joliet and Eastern Railway Company became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective February 1, 2009, the date on which it began operations. It is noted that EJ&E has been pre-assigned B.A. No. 3397.

According to Mr. Gentile, the assets which were retained by old EJ&E continue in operation. Effective January 28, 2009, old EJ&E changed its name to Gary Railway Company. The evidence of records indicates that old EJ&E, which has been found to be an employer covered by the Acts, is still in operation, but with a new name, Gary Railway Company. Records of the Board will be changed to reflect the new name. Gary Railway Company will be using B.A. No. 1309 (the old EJ&E B.A. number).

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board