

EMPLOYER STATUS DETERMINATION**Port of Ivory, LLC (PI)**

This is a determination of the Railroad Retirement Board concerning the status of Port of Ivory, LLC (PI) 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). The status of PI under the Acts has not previously been considered.

PI is a privately held corporation owned by Don Guy, Lucy Best, and Chuck Littlefield. Mr. Littlefield supplied information regarding the formation and start of operations for PI, including additional information regarding certain aspects of PI's operations. Mr. Littlefield is the CEO of PI. He represented that PI began operations on August 7, 2009. PI reportedly has no current employees.

The Surface Transportation Board (STB) has not rendered any decision regarding the status of PI. PI owns two rail spurs within a 110 acre facility zoned for heavy industrial use. PI'S two industrial tracks have a 25 car capacity. PI is the landlord for three tenants: Richard Best Transfer Inc., Miramonte Sanitation Inc., and ALW Enterprises. PI, through Richard Best Transfer Inc., offloads various commodities from rail and places the products into containers and then trucks the product to the Port of Long Beach, Port of Los Angeles, and the Port of Oakland. PI makes rail service available to tenants and any business that is willing to pay for rail loading or off-loading services. PI advertises through word of mouth referrals and through the Tulare County Economic Development Corporation. According to Mr. Littlefield, UP, BNSF, and the San Joaquin Valley Railroad refer customers to PI through their own respective marketing departments. PI has plans to expand the rail capacity to allow for increased loading and off-loading services, but has not yet begun to undertake the expansion.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)), 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. 45 U.S.C. § 231(a)(1)(i).

Section 10501 of Title 49 provides that the Surface Transportation Board (STB) has jurisdiction over transportation by rail carrier that is between a place in a State and a place in the same or another State as part of the interstate rail network [49 U.S.C. §10501(a)]. Section 10102 defines "railroad" to include:

“(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” [49 U.S.C. §10102(6)(C)]

The evidence of record establishes that Port of Ivory is operating as a switching railway providing services to customers within a private parcel of land and to any companies interested in hiring PI for switching and loading/off-loading service. The information provided demonstrates that PI operates lines of track within its own private, industrially zoned parcel and serves customers within that parcel that also fall under Port of Ivory’s corporate umbrella or who hire them for their loading and off-loading services. Services that PI performs off-site are currently limited to trucking containers of commodities to various ports in California, but that service will be expanded in the future. PI reports that it advertises its loading and off-loading services to the public, even though its rail services are limited to the confines of the industrial park.

Decisions of the Board in prior cases reflect that where the operator does not hold itself out as a common carrier, the Board has concluded that the track is operated as a private carrier, and consequently is not a covered rail carrier employer. See B.C.D. 94-29, *Hardin Southern Railroad Company*; B.C.D. 94-105.2, *Great Miami & Western Railway*. PI does not fit this description due to the public nature of its advertising, its performance of loading and off-loading services for the public, and its plan to expand rail services.

The Surface Transportation Board (STB) has jurisdiction over common carriers engaged in the interstate transportation of passengers or property by railroad pursuant to section 10501 of Title 49 of the United States Code. A common carrier may be defined in general as one which holds itself out to the public as engaging in the business of transporting people or property from place to place for compensation. It is the right of the public to demand service that is the real criterion determinative of an entity’s character as a common carrier. In contrast, a private carrier is one which, without making it a vocation or holding itself out to the public as ready to act for all who desire the service, undertakes by special agreement in a particular instance only, to transport property or persons from place to place. Private carriers thus undertake not to carry for all persons indiscriminately, but rather to transport only for those with whom they see fit to contract individually. The Board has followed the distinction made by the STB, formerly the Interstate Commerce Commission, which is judicially supported in The Tap Line Cases, 234 U.S. 1 (1913); also, International Detective Service, Inc. v. Interstate Commerce Commission, 595 F. 2d 862, 865 (D.C. Cir. 1979).

In this case, the information contained in the file indicates that PI has not obtained any STB ruling; however the evidence establishes that PI operates equipment and facilities and performs services as a carrier by railroad.

The evidence of record establishes that Port of Ivory, LLC, is a rail carrier operating in interstate commerce. Accordingly, consistent with earlier decisions of the Board, it is determined that Port of Ivory, LLC, meets the definition of a rail carrier within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever