

**EMPLOYER STATUS DETERMINATION
Nebraska NorthWestern Railroad Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Nebraska NorthWestern Railroad Inc. (NNW) as an employer 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.). The status of NNW under the Acts has not previously been considered.

Information about NNW was provided by Mr. George LaPray, Manager Administration of NNW. According to Mr. LaPray, NNW was incorporated in January 2010, and began operations in April 2010. NNW has two employees who were first compensated April 1, 2010. Mr. LaPray is also General Manager of Minnesota Northern Railroad (B.A. No. 4648), Dakota Northern Railroad (B.A. No. 2674), and St. Croix Valley Railroad (B.A. No. 2646).

In Surface Transportation Board Finance Docket No. 35346, NNW filed a notice of exemption to purchase 7.22 miles of rail line and lease and operate 20.88 miles of rail line from Dakota, Minnesota & Eastern Railroad Corporation (B.A. No. 2632). NNW interchanges with the Canadian Pacific Railway.

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;
- (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 * * *.

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).

The evidence of record establishes that NNW is a class III rail carrier operating in interstate commerce. Accordingly, it is determined that NNW is an employer within the meaning of

section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 1, 2010, the date as of which it first compensated employees.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board