

EMPLOYER STATUS DETERMINATION**Permian Basin Railways, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Permian Basin Railways, Inc. (Permian Basin) 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).

Permian Basin is owned by Iowa Pacific Holdings. Permian Basin began operations May 25, 2002, when it concluded two transactions with Rail America, Inc. At that time, Permian Basin, through its subsidiary West Texas and Lubbock Railway Company, Inc., entered into a lease of the entire rail line of West Texas and Lubbock Railroad Company, Inc. (emphasis supplied). See: Board Coverage Decision 02-93, and West Texas and Lubbock Railway Co. Inc.—Acquisition and Operation Exemption—West Texas and Lubbock Railroad Company, Inc., STB Finance Docket No. 34205, 67 Fed. Reg. 40980 (June 14, 2002). On or about the same day, Permian Basin also purchased the stock of the Austin Railroad Company, doing business as Austin & Northwestern Railroad Company, Inc. See: Permian Basin Railways, Inc.—Continuance in Control Exemption—West Texas and Lubbock Railway Company, Inc. and Austin & Northwestern Railway Company, Inc., STB Finance Docket No. 34206, 67 Fed. Reg. 40979 (June 14, 2002). The Austin & Northwestern owns a 107-mile line of rail between Monahans, Texas and Lovington, New Mexico, which it operates as the Texas New Mexico Railroad. See: Rail America, Inc.—Control Exemption—RailTex, Inc., STB Finance Docket No. 33813, 64 Fed. Reg. 62245 (November 16, 1999). Both the West Texas and Lubbock Railway Company, Inc. (BA No. 2888) and the Austin Railroad Company, d/b/a Austin & Northwestern Railroad Company, Inc., (BA No. 3865) are covered rail carrier employers under the Acts. See: B.C.D. 02-93, *West Texas and Lubbock Railway Company, Inc.*; and Legal Opinion L-86-125, *Austin Railroad Company, Inc., d/b/a Austin and Northwestern Railroad Company*. In a letter dated September 10, 2003, the Vice President of Iowa Pacific stated that Permian Basin had no employees, and that “The name Permian Basin Railways is used to refer to the W[est] T[exas] L[ubbock] C[ompany] and T[exas] N[ew] M[exico] R[ailroad] division of the Austin & Northwestern Railroad Company] collectively to customers of each railroad.”

In B.C.D. 04-47 dated September 20, 2004, the Board found that Iowa Pacific was not a covered employer under the Acts. In addition, the Board addressed whether Permian was a covered employer. It found that through control of Permian Basin, Iowa Pacific also controlled Permian Basin’s two rail carrier subsidiaries.

Therefore, Permian Basin, Texas New Mexico, and West Texas Lubbock division of the Austin & Northwestern Railroad Company were under the common control of Iowa Pacific within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts. See regulations of the Board at 20 CFR 202.4, 202.5; and Universal Carloading & Distributing Company v. Railroad Retirement Board, 172 F. 2d 22, (D.C. Cir. 1948). If Permian Basin had performed any services for its affiliated rail carriers which were services in connection with the transportation of property by rail, it would have met both conditions for coverage under Section 1(a)(1)(ii) of the RRA. Based on the information available at the time, however, Permian Basin was a corporate shell with no employees. Any marketing and accounting services performed by the parent superstructure of the railroads for the rail subsidiaries was done by Iowa Pacific. Accordingly, because it did not meet both conditions for coverage under the Acts as a rail carrier affiliate employer, the Board found that Permian Basin Railways was not a covered employer under the Acts.

In a letter dated October 19, 2011, Mr. Daniel Marko, General Counsel for Permian Basin Railways and Iowa Pacific, stated that the situation regarding Permian Basin changed as of May 16, 2011. At that time, Permian Basin began compensating employees that were performing duties directly to multiple carriers that are under common control with Permian Basin. In a letter dated July 10, 2012, Mr. Marko further explained that Permian Basin is the railroad operating holding company for six individually covered carriers: San Luis & Rio Grande Railroad (BA No. 3796), West Texas & Lubbock Railway (BA No. 2888), Texas New Mexico Railroad (BA No. 3865), Saratoga and North Creek Railway (BA No. 1911), Chicago Terminal Railroad Company (BA No. 4655), and Mt. Hood Railroad Company (BA No. 2758). Permian Basin is now performing some common functions which are closely related to the operations of each covered carrier but not performed on behalf of any one of the covered carriers. Employees of Permian Basin currently provide management supervision for covered carriers and provided centralized functions such as dispatching for these carriers as well. Permian Basin has 17 employees. They are all providing service for covered carriers and they are dedicating 100% of their time doing so. No other corporate information regarding Permian Basin had changed since the Board's decision in 2004.

Section 1(a)(1) of the RRA defines the term "employer" to include:

- (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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Section 1 of the RUIA contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act.

As stated in B.C.D. 04-47, Permian Basin meets the first criteria of common control under Section 1(a)(1)(ii) of the RRA. Now, based on the information provided by Permian Basin, it also meets the second criteria. Permian Basin employees perform services in connection with the transportation of passengers or property by railroad. Specifically, these employees perform management supervision for covered carriers and provide centralized functions such as dispatching.

Based on the evidence of record, we find that Permian Basin is under common control with a covered employer and provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA.

In accordance with the above discussion we find that Permian Basin Railways, Inc. became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective May 16, 2011, the date Permian Basin's employees began providing direct services to covered employers.

Original signed by:

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