

**EMPLOYER STATUS DETERMINATION  
Rail Transportation Solutions, Inc. (RTSI)**

This is a determination of the Railroad Retirement Board concerning the status of Rail Transportation Solutions, Inc. (RTSI) 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.).

There was no verified notice of exemption filed with the Surface Transportation Board (STB).

Information regarding RTSI was furnished by Ms. Jennifer Rowe, Corporate Payroll Manager for Genesee & Wyoming Railroad Company, Inc. (GWI) (B.A. No. 2209). According to Ms. Rowe, RTSI is 100 percent owned by GWI and does not have a Chief Executive Officer. Ms. Rowe stated that Mr. Andrew T. Chunko is the President of RTSI. Ms. Rowe stated that RTSI began operations for Martin Marietta Corporation (Martin Marietta) on October 7, 2015 and has one employee who was first compensated upon the commencement of operations. RTSI does not own any railroad track and does not interchange with any railroads, according to Ms. Rowe. Ms. Rowe stated that RTSI does not own any rail line and only operates on Martin Marietta owned facilities. RTSI will not move any traffic in freight rail services and is only providing railroad switching services for rail-served quarries owned by Martin Marietta and its affiliates at various locations in Texas, according to Ms. Rowe. Ms. Rowe stated that RTSI will initially focus on providing railcar switching services and ancillary railroad transportation to the extent necessary for Martin Marietta.

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 shows that RTSI is a switching railway which provides services to only one customer, Martin Marietta. 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 transport only for those with whom they see fit to contract individually. The RRB has followed the distinction made by the Surface Transportation Board, 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).

Additionally, the term "railroad" under the ICC Termination Act of 1995 includes a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U. S. C. §10102(6)(C)). It is well settled that a terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U. S. v. California, 297 U.S. 175 (1936). Consistent with this, the Board has held terminal railroads to be covered employers under the RRA and RUIA where they act in the capacity of a common carrier subject to the ICC Termination Act of 1995.

In this case, the information contained in the file indicates that RTSI is not a common carrier, but operates instead as a private carrier which performs intra-plant switching for a single customer. Decisions of the Board in prior cases have concluded that where the operator does not hold itself out as a common carrier and the track is operated as a private carrier, the operator consequently is not a covered rail carrier employer. See e.g., B.C.D. 94-29 *Hardin Southern Railroad Company*; B.C.D. 94-105.2, *Great Miami & Western Railway*. Accordingly, consistent with the earlier decisions of the Board, we hold that RTSI is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Walter A. Barrows

Steven J. Anthony