

## **EMPLOYER STATUS DETERMINATION**

### **Sault Ste. Marie Bridge Company**

This is the determination of the Railroad Retirement Board regarding the status of Sault Ste. Marie Bridge Company (SSMBC) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). SSMBC has not previously been determined to be an employer under the RRA and the RUIA.

Information about SSMBC was furnished by Mr. A. Dwight Johnson, Director, Corporate Taxes and Costs, of SSMBC. In a letter dated August 3, 1994, Mr. Johnson stated that SSMBC is owned by the Wisconsin Central Corporation, the parent of the Wisconsin Central Limited, a covered employer. SSMBC owns the multi-span, railroad bridge, tracks and appurtenances which cross the St. Mary River between Sault Ste. Marie, Michigan and Sault Ste. Marie, Ontario, Canada. The property is used for the interchange of traffic between the CP on the Ontario side and the Wisconsin Central Limited on the Michigan side. Mr. Johnson also stated that the SSMBC has no employees and conducts no transportation operations on its own. All administrative and engineering services for SSMBC, including Mr. Johnson's services, are provided by employees of the Wisconsin Central Ltd., an employer under the Acts. Those employees are covered under the Acts through their service for the Wisconsin Central.

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

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(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(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

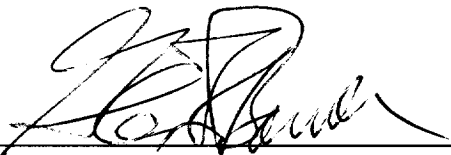
SSMBC is subject to the jurisdiction of the ICC because it owns a track and appurtenances which are used in interstate commerce. See Finance Docket No. 32036 (9 I.C.C. 2d 233, 1992 Lexis 284). However, SSMBC has no residual authority to operate a railroad nor does it purport to engage a railroad operations. Rather it is

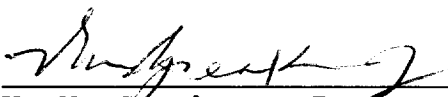
merely a passive owner of a railroad bridge. In Board Order 89-74 the Board held that a company which held title to a rail line but which did not have the capability or the intent to conduct railroad operations is not an employer under the Acts. See Appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989. SSMBC is in much the same situation as was the Board of Trustees of Galveston Wharves. The evidence establishes that SSMBC does not have the capability of operating as a carrier and has no intention of doing so.

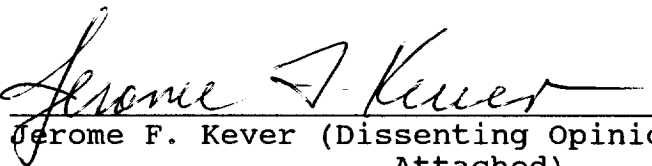
We must turn next to section 1(a)(1)(ii) of the Act to determine whether the SSMBC is a covered employer under that section. SSMBC is owned by the Wisconsin Central Corporation which is also the parent company of the Wisconsin Central Ltd., an employer under the Acts. Therefore, SSMBC is under common control with a rail carrier. Thus, if SSMBC performs service in connection with rail transportation, it would be a covered employer. Section 202.7 of the Board's regulations (20 CFR 202.7) explains that service or operation of a facility is in connection with railroad transportation if:

\* \* \* such service \* \* \* is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

SSMBC owns and operates a railroad bridge, track, and appurtenances which are clearly integral to the operation of its affiliate railroad. In accordance with section 202.7 of the regulations, a majority of the Board finds that SSMBC is operating a facility in connection with railroad transportation and is a covered employer under the Acts.

  
 \_\_\_\_\_  
 Glen L. Bower

  
 \_\_\_\_\_  
 V. M. Speakman, Jr.

  
 \_\_\_\_\_  
 Jerome F. Keever (Dissenting Opinion  
 Attached)

Attachment

**Dissent of Jerome F. Kever  
Management Member  
Coverage Determination  
Sault Ste. Marie Bridge Company**

I hereby dissent from that portion of the Board's decision on the Sault Ste. Marie Bridge Company (SSMBC) that finds ownership of the railroad bridge amounts to "service in connection with transportation". The decision further finds that SSMBC has no employees and that all administrative and engineering services are performed by employees of Wisconsin Central Ltd., a covered employer. I reject the notion that mere holding of title is sufficient to find service in connection with transportation.

  
Jerome F. Kever

7/13/95  
Date