

## **EMPLOYER STATUS DETERMINATION**

### **Consolidated Grain and Barge Company**

This is the decision of the Railroad Retirement Board regarding the status of the Consolidated Grain and Barge Company (CGB) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

On October 23, 1990, CGB and River and Rail, Inc. (RRI) petitioned the Interstate Commerce Commission for approval to acquire control of MG Rail, Inc. from Merchants Management Corporation. RRI is a wholly owned noncarrier subsidiary of CGB. MG Rail, Inc. (BA-3357) has been held to be an employer under the RRA and the RUIA since August 6, 1985. See Legal Opinion L-87-33, dated March 13, 1987. That opinion noted that MG Rail, Inc. was controlled by Merchants Grain, Inc., a wholly-owned subsidiary of Merchants Grain & Transportation, Inc., a non-carrier.

On December 28, 1990, the Interstate Commerce Commission granted the exemption sought by CGB, which it described as a noncarrier which controls two motor carriers. The effect of the exemption merely reflected a change in corporate ownership of MG Rail, Inc., which reportedly is continuing to operate unchanged as a rail carrier over the same line of track as before.

Information provided by James Stitzlein of CGB indicates that CGB leased grain facilities formerly operated by Merchants Grain, Inc. at the Clark Maritime Center in Jeffersonville, Indiana. Mr. Stitzlein stated that River and Rail, Inc., (RRI)<sup>1</sup> a subsidiary of CGB, bought MG Rail, Inc. from Merchants Grain, Inc. in order to provide rail switching service for itself and other industries at the Clark Maritime Center.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. 231(a)(1)) defines an "employer", insofar as is relevant here, as follows:

(i) any express company, sleeping-car company and carrier by railroad, subject to part I of the Interstate Commerce Act;

(ii) any company which is directly or indirectly owned or

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<sup>1</sup> The status of RRI under the Railroad Retirement and Railroad Unemployment Insurance Acts has not been considered and is not before the Board at this time.

controlled by, or under common control with one or more employers as defined by paragraph (i) of this subdivision and which operates any equipment or facility or performs any

service (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad  
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Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 351(a)) defines "employer" in substantially the same way.

It is clear that CGB is not a rail carrier and thus would not be an employer within the meaning of section 1(a)(1)(i) of the RRA or the analogous provision of the RUIA. We must next consider whether, under section 1(a)(1)(ii) of the RRA, CGB should be considered as under common control with MG Rail, Inc., and if so, whether CGB provides "service in connection with" railroad transportation. The evidence developed in this case indicates that CGB, while under common control with MG Rail, Inc., since it owns RRI, which in turn owns MG Rail, is not performing or providing any service in connection with railroad transportation. In fact, there is no indication that CGB provides any service to MG Rail, Inc. or to any other rail carrier employer. Therefore, it is determined that CGB is not an employer under the RRA or the RUIA.

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