

EMPLOYER STATUS DETERMINATION
Lackawanna Railway, Incorporated

This is the determination of the Railroad Retirement Board concerning the status of Lackawanna Railway, Incorporated, (Lackawanna Railway) 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).

Lackawanna County Rail Authority (Authority)¹ acquired 33 miles of track in Pennsylvania from the Consolidated Rail Corporation (Conrail), stretching from Scranton to Pocono, where the line interchanges with Conrail. Authority leased the line to Lackawanna Railway, which in turn contracted with Lackawanna Valley Railroad Corporation (Valley Railroad)² to operate the leased line in interstate commerce. The Interstate Commerce Commission has exempted this transaction from regulation. See: Lackawanna Railway, Inc., -- Acquisition and Operation Exemption, Lines of Consolidated Rail Corp. and Lackawanna County Rail Authority, Finance Docket No. 31938, 56 Fed. Reg. 47103, (September 17, 1991). Lackawanna Railway states that it has no employees, and that all operations since inception on September 12, 1991, have been conducted by Valley Railroad.

Section 1 of the Railroad Retirement Act (RRA) provides in pertinent part that:

(a)(1) The term "employer" shall include-

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

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. § 351(a), (b)) and section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231) contain essentially the same definition.

¹The Authority was formed in 1984 as a municipal corporation of the state of Pennsylvania for the purpose of preserving rail service. See: Lackawanna County Railroad Authority, Inc., Exemption from Regulation, Finance Docket No. 30628, 50 Fed. Reg. 11950, (March 22, 1985.)

²Lackawanna Valley Railroad has been determined to be a covered employer under the Acts. See Legal Opinion L-86-4.

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The Board has ruled that in the case of a company which merely has a leasehold interest and contracts with another company to operate rail carrier service over its line, the company which contracts for performance of the rail carrier service is not a rail carrier employer under the Acts. See Appeal of the Board of Trustees of Galveston Wharves, Board Order 89-74. Based upon the information summarized above, and consistent with the holding in Board Order 89-74, it is the decision of a majority of the Board that Lackawanna Railway, Incorporated, is not an employer under the RRA and the RUIA.

Glen L. Bower

V.M. Speakman, Jr. (dissenting)

Jerome F. Kever

CCCook:SABartholow:TWSadler:KTBlank:atr
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TO: The Board

FROM: General Counsel

SUBJECT: Lackawanna Railway, Incorporated
Employer Status

Attached is a draft determination that Lackawanna Railway, Inc., is not a covered employer. The draft ruling follows the decision of the Board in Appeal of the Board of Trustees of Galveston Wharves, Board Order 89-74, wherein the Board overruled earlier opinions of the agency and held that a company possessing ICC authority to conduct rail operations, which leases the rail line to another entity for operation and does not retain the capability of conducting the operation, is not an "employer" under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Catherine C. Cook

Attachment

SABartholow:TWSadler:KTBlank:atr