

Employer Status Determination Jackson, Gordonville and Deltaville Railroad Company

This is the decision of the Railroad Retirement Board regarding the status of the Jackson, Gordonville and Deltaville Railroad Company (JGD) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

JGD acquired two rail lines totalling approximately 19 miles from the Jackson Industrial Development Company and The Golden Cat Railroad Corporation. JGD has no employees and has contracted with the Jackson and Southern Railroad, an employer under the Acts (B.A. Number 3862), to operate the lines and to provide its own equipment.

The definition of an employer contained in section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) reads in part as follows:

The term "employer" shall include--

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

(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
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Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

In Board Order 89-74 the Board held that a lessor employer, which had sold all its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under the Acts. See Appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989.

In this case, JGD does not have any railroad equipment. It has no employees and is not now operating a railroad nor does it have the capability to do so. JGD is in precisely the same position as was Board of Trustees of Galveston Wharves. Following our earlier opinion in B.O. 89-74, a majority of the Board holds that JGD is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Glen L. Bower

V. M. Speakman, Jr.(dissenting)

Jerome F. Kever

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