

**EMPLOYER STATUS DETERMINATION**  
**B&K Locomotive Service Inc.**

This is the determination of the Railroad Retirement Board concerning the status of B&K Locomotive Service Inc. (B&K) 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.) (RUIA).

The evidence adduced establishes that B&K is a privately held corporation that provides service and parts for industrial locomotives. James R. Bischoff is the chief executive officer. B&K was incorporated in 1980 and began its operations in the same year. It has two employees. B&K stated that it is not affiliated with any railroad or railroad association. None of its directors or principal officers are directors or principal officers of any railroad companies nor do they own a controlling interest in any carrier. None of its directors or principal officers are employees of any railroad company. B&K does not own any stock in any railroads, nor does any railroad own any of the stock in B&K. B&K shareholders do not own controlling interest in any carrier covered under the Acts. B&K employees do not perform work on property owned by a railroad. B&K's employees are not directed or supervised by employees of a railroad in the performance of their work.

Section 1 of the RRA (45 U.S.C. §231 (a)(1)) defines an employer to include the following:

(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 services (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad  
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The RUIA contains the same definition.

Section 202.4 of the Board's regulations provides that a company is controlled by a carrier when that carrier, either directly or indirectly, exercises control over the business and policies of that company. Section 202.5 of the Board's regulations, defines when a company or person is controlled by or under common control with a carrier. That section provides as follows:

A company or person is under common control with a carrier whenever the control of such company or person is in the same person, persons, or company as that by which such carrier is controlled. [20 CFR 202.5]

B&K clearly is not a carrier by rail. According to the evidence of record, none of B&K's directors or principal officers are directors or principal officers of any covered employers. Moreover, the evidence shows that B&K is not owned by any railroad and that it is not owned by any person or entity that is also an owner of a controlling interest in an employer covered under section 1(a)(1)(i) of the RRA. Based upon the facts in this case, the Board finds that B&K is neither controlled by nor under common control with an employer covered under the Acts.

Accordingly, the Board finds that B&K Locomotive Service, Inc is not a covered employer under the RRA and the RUIA.

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Glen L. Bower

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V.M. Speakman, Jr.

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