

## **EMPLOYER STATUS DETERMINATION**

### **Barnes Railroad Services, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Barnes Railroad Services, Inc. (Barnes) 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).

Information about Barnes was furnished by its President, Mr. Roland A. Barnes. Barnes was incorporated and began operations on October 9, 1975. Barnes is a privately-held corporation. Its stock is not owned by any railroad, and it is not affiliated with any railroad. None of Barnes' directors or principal officers are employees of any railroad company.

Barnes is engaged in the maintenance and construction of railroad tracks, including tie, rail and ballast renewal; aligning and surfacing tracks; ditching, weeding and cleaning roadbed; and constructing new track. Barnes does work for Chattahoochee Industrial Railroad (BA No.2558), The Bay Line Railroad (BA No.5553), A&G Railroad (BA No.5552), and Georgia Central Railway, L.P. (BA No. 5545). None of Barnes' employees are directed or supervised by employees of a railroad.

Section 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 of the RUIA contains essentially the same definition.

**Barnes Railroad Services, Inc.**

Barnes is a privately held company which has been in business for almost 19 years. Barnes does not operate a rail carrier in interstate commerce, and there is no evidence that Barnes is owned or controlled by any rail carrier employer. The Board therefore finds that Barnes is not an employer under the RRA and the RUIA.

Finally, the Board finds that employees of Barnes who perform maintenance of way for railroads under contract should not be considered employees of the railroads. See Kelm v. Chicago, St. Paul, Minneapolis and Omaha Railway Company, 206 F.2d 831 (8th Cir. 1953) and In Re General Services, Inc., B.C.D. 94-17.

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Glen L. Bower

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