

**EMPLOYER STATUS DETERMINATION  
DECISION ON RECONSIDERATION  
Pabtex, Inc.**

This is the decision of the Railroad Retirement Board in response to a request for reconsideration of the determination by the Deputy General Counsel dated October 10, 1990, that Pabtex, Inc., has been an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts (hereafter Acts) since January 1, 1985.

The initial decision in this case was based on information to the effect that Pabtex is an affiliate of the Kansas City Southern Railway Company and operates a bulk handling facility which transfers coal and coke from trucks and rail cars to ships and barges.

A brief submitted to the Board by counsel for Pabtex describes a substantially different factual situation. Pabtex's customers are brokers which purchase the coke from petroleum refineries for resale. The brokers arrange for shipping the coke to Pabtex by truck or rail. The coke is unloaded and crushed by Pabtex. It is weighed and graded and then conveyed to a stacker and reclaimer where it is segregated by customer and grade, and later carried to a ship loader. Pabtex provides blending service, which consists of combining portions of various grades of coke to produce a batch of a given grade; approximately 90 percent of the coke must be blended. Pabtex also stores the coke, which requires frequent spraying of the coke, until the broker locates a buyer. Pabtex bills the brokers for the services rendered by Pabtex, according to the amount of coke involved, and the brokers pay Pabtex directly.

Section 1(a)(1) of the Railroad Retirement Act 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

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or icing, storage, or handling of property transported by  
railroad \* \* \*. [45 U.S.C. § 231(a)(1)]

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Pabtex and the Kansas City Southern Railway Company are both owned and controlled by Kansas City Industries. Accordingly, Pabtex is under common control with a railroad employer. Therefore, if Pabtex provides a service in connection with the transportation of passengers or property by railroad it is an employer under the Acts. Section 202.7 of the regulations (20 CFR 202.7) defines a service as being in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations.

The Kansas City Southern is a carrier which provides interstate freight service. There is no evidence that Pabtex provides any service to the Kansas City Southern in connection with that operation. Rather, the evidence shows that Pabtex performs all operations, which are analogous to a manufacturing operation and not rail-related services, pursuant to contractual arrangements with brokers. Because Pabtex does not perform a service in connection with rail transportation, the Board finds that it is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Board upon reconsideration of the initial decision of the Deputy General Counsel reverses that decision and determines that Pabtex is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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Glen L. Bower

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V. M. Speakman, Jr.

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Jerome F. Kever

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**TO** : The Board

**FROM** : Catherine C. Cook  
General Counsel

**SUBJECT:** Coverage Determination  
**Pabtex, Inc.**

Attached is a proposed coverage ruling for Board approval.

Attachment