

**EMPLOYER STATUS DETERMINATION
FULTON COUNTY RAILROAD, INC.**

This is the decision of the Railroad Retirement Board regarding the status of the Fulton County Railroad, Inc. (FCR), as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

FCR is a switching railway which provides services to only one customer, Wilson Fertilizer & Grain at Rochester, Indiana. FCR has one employee. It has now obtained ICC authority for its operation. It is not now changing its operation but has obtained this authority because of the uncertainty regarding future rail service to be provided by its connecting carrier.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(a)(1)), insofar as relevant here, defines a covered employer as:

(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 (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions.

The Interstate Commerce Commission has jurisdiction over common carriers engaged in the interstate transportation of passengers or property by railroad pursuant to section 10501 of title 49 of the United States Code. A common carrier may be defined in general as one which holds itself out to the public as engaging in the business of transporting people or property from place to place for compensation. It is the right of the public to demand service that is the real criterion determinative of an entity's character as a common carrier. In contrast, a private carrier is one which, without making it a vocation or holding itself out to the public as ready to act for all who desire the service, undertakes by special agreement in a particular instance only, to transport property or

persons from place to place. Private carriers thus undertake not to carry for all persons indiscriminately, but rather to transport only for those with whom they see fit to contract individually.

The Railroad Retirement Board has followed the distinction made by the Interstate Commerce Commission, which is judicially supported in The Tap Line Cases, 234 U.S. 1 (1913); also International Detective Service, Inc. v. Interstate Commerce Commission, 595 F. 2d 862, 865 (D.C. Cir. 1979).

In this case, FCR does not hold itself out to the public as engaging in the business of transportation of persons or property over the line in question. Rather it performs services over that line only for the one company with which it has contracted. Accordingly, the Board determines that FCR is not a carrier under the Acts.

Applying section 1(a)(1)(ii) of the Railroad Retirement Act to the facts of this case, we find that FCR is owned by Mr. Tom Wilson and is not under common control with a carrier. Accordingly, FCR is not a covered employer under section 1(a)(1)(ii); since it is also not a carrier, as defined in paragraph (i) of section 1(a)(1) of the Railroad Retirement Act, it is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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