

**EMPLOYER STATUS DETERMINATION  
CMC RAILROAD I, LTD**

This is the decision of the Railroad Retirement Board regarding the status of CMC Railroad I, Ltd. (CMC) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

CMC is a limited partnership which was formed December 2, 1993. It has no employees and owns no track or rail assets. It leases a rail storage yard from NCC Charlie Company and contracts with GWI Switching Services, L.P., to do all switching at the yard. GWI was held not to be an employer under the Acts for the reason that it did not hold itself out to the public as a common carrier (BCD 94-113).

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, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence establishes that CMC is not a carrier by rail. Further, there is no evidence indicating that it is under common ownership with any rail carrier or controlled by persons who control a railroad. Accordingly, the Board holds that CMC is not an employer under the Acts.

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A fortiori that service is not sufficient to constitute service in connection with rail service. In any case, it is the Board's opinion that a company which does not operate as a carrier and has no rail-related assets or anything else which would enable it to operate as a carrier is not a covered employer under the Acts. Cf. Board Order 89-74.