

EMPLOYER STATUS DETERMINATION

Greater Shenandoah Valley Development Company
d/b/a Shenandoah Valley Railroad Company

This is the determination of the Railroad Retirement Board concerning the status of the Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company (SVR) 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).

In Interstate Commerce Commission (ICC) Finance Docket No. 32470, decided June 30, 1994, SVR and Buckingham Branch Railroad (BA No. 2410) (BB) sought an exemption from the prior approval requirements of 49 U.S.C. §11343 for BB to operate SVR's 20.2 mile line of railroad between Pleasant Valley and Staunton, in Rockingham and Augusta Counties, Virginia. SVR purchased the line in 1993 through an offer of financial assistance filed under 49 U.S.C. §10905 and 49 CFR 1152.27(c)(2). See Chesapeake Western Railway Company -- Abandonment -- Between Pleasant Valley and Staunton in Rockingham and Augusta Counties, VA, Docket No. AB-290 (Sub-No. 120) (ICC served Oct. 8, 1992).

The ICC decision in Finance Docket No. 32470 stated that SVR had been providing service to the one shipper on the line by employing CSX Transportation, Inc. (CSXT) (BA No.1524), as SVR's agent.¹ SVR and BB entered into a one-year renewable agreement whereby BB would operate the line as an independent operator replacing the interim CSXT arrangement. Under the agreement, BB has exclusive control in the management and operation of the rail service and provides rail freight service to all shippers on the line, manages all operations, establishes all freight rates, maintains all appropriate books and records, and handles routine maintenance. SVR is responsible for any rehabilitation and new construction on the line and will pay BB for serving the shippers and managing the rail freight operations. In addition, SVR retains the right to conduct rail transportation service itself or to designate an operator in the event of BB's default of its obligations under the agreement.

BB began railroad operations over SVR's line on August 23, 1994. SVR does not have any employees.

Section 1 of the RRA defines the term "employer" to include:

¹In a letter dated March 17, 1994, to Mr. Edmund Fleming, Chief of Audit and Compliance, Mr. V.J. Ludlum, General Manager of SVR, stated that although an operating agreement with CSXT was "in place during 1993", no customers chose to use the service.

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(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of title 49. [45 U.S.C. §231(a)(1)(i)].

Section 1 of the RUIA contains essentially the same definition.


In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

SVR does not operate the rail line in question, but rather has an arrangement with another railroad carrier, which is an employer under the Acts, to do so. That employer would be responsible for reporting employee service to the Board with respect to operation of the SVR rail line. Consistent with above-described analysis of cases such as this, a majority of the Board finds that SVR is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

SVR is reminded to inform the Board of any change in the operation of the rail line in this case.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting
opinion attached)

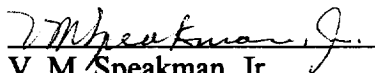


Jerome F. Kever

**DISSENT OF
V. M. SPEAKMAN, JR.
ON THE EMPLOYER STATUS DETERMINATION OF
GREATER SHENANDOAH VALLEY DEVELOPMENT COMPANY
D/B/A SHENANDOAH VALLEY RAILROAD COMPANY**

The fact that Greater Shenandoah Valley Development Company d/b/a Shenandoah Valley Railroad Company (SVR) has no employees and that it contracts with Buckingham Branch Railroad (BB) for railroad service over its line does not mean that SVR is not an employer under the Acts. Its status as a carrier subject to ICC jurisdiction is what renders it a covered employer. See B. C. D. 94-112 (In re Texas and Oklahoma Railroad Co.). See also Cheney Railroad Company, Inc. v. Railroad Retirement Board. In the United States Court of Appeals for the District of Columbia, No. 93-1621, March 24, 1995. SVR is clearly a rail carrier subject to ICC jurisdiction, as is evidenced by the fact that it had to seek ICC approval in Finance Docket No. 32470 for its agreement with BB and by the fact that it retains the right to conduct rail transportation service itself or to designate an operator in the event of BB's default of its obligations under its agreement with SVR. Moreover, SVR is responsible for any rehabilitation and new construction on its line.

The decision of the majority of the Board in this case sets a bad precedent and conflicts with current law. For the reasons stated, I dissent.


V. M. Speakman, Jr.

JAN 2 - 1996

Date