

## **EMPLOYER STATUS DETERMINATION**

### **The Warren and Trumbull Railroad Company**

This is the determination of the Railroad Retirement Board concerning the status of The Warren and Trumbull Railroad Company (WTRC) 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).

The WTRC is the operator of rail property owned by the Economic Development Rail Corporation II, a wholly-owned subsidiary of the Mahoning Valley Economic Development Corporation. WTRC is responsible for all transportation, maintenance, and administrative matters on the property of Economic Development Rail Corporation II. WTRC pays Economic Development Rail Corporation II \$10.00 per carload received or delivered. WTRC began operations March 15, 1994, and performs a two to three hour run two to three times a week; it interchanges with CSXT. WTRC advises that it has no employees or any equipment. It contracts with the Ohio Central Railroad, Inc., to provide service.

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, that entity will be found to be a covered employer with respect to the operation of the line it has undertaken. 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. However, if 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.

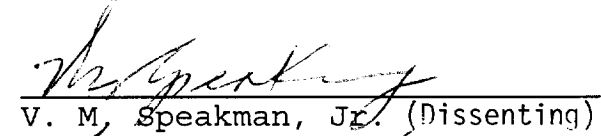
The WTRC has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to PRI to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that WTRC is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

**The Warren and Trumbull Railroad Company**

The WTRC 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)



Jerome F. Kever