

**EMPLOYER STATUS DETERMINATION
JOLIET JUNCTION RAILROAD, INC.**

This is the decision of the Railroad Retirement Board regarding the status of the Joliet Junction Railroad, Inc. (JJR), as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Information about JJR was supplied by Mr. Donald L. Bachman, President of JJR. JJR is a switching railway which provides connecting service to the Elgin, Joliet and Eastern Railway Company (EJ&E) through separate contracts with, A.P. Green Industries, Alexander Lumber, Globe Lumber, and Menards. JJR does not advertise its services to the public. JJR does not hold itself out to the public as a common carrier. JJR operates as a contract switching railroad over track abandoned by the EJ&E. It has not obtained any authority from the ICC since it does not consider itself to be a common 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 carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(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 *

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There is no evidence that JJR is under common control with a railroad carrier; accordingly, JJR may be determined to be a covered employee only if its rail operation renders JJR a rail carrier subject to the jurisdiction of the Surface Transportation Board.

Section 10501(a)(1)(B) of Title 49 U.S.C. provides that the Surface Transportation Board shall have jurisdiction over transportation by rail carriers. Section 10501(a)(1)(B) provides that the Surface Transportation Board has jurisdiction when "*** the transportation is under common *** arrangement for a continuous carriage or shipment."

JJR characterizes itself as a private carrier, in effect contending that it is not a "common carrier" by rail and therefore not conducting an activity regulated by the Surface Transportation Board. In support of this contention, JJR states that "JJR does not publish tariffs, collect demurrage or appear in the routing on a bill of lading. JJR does not collect a division of revenue from EJ&E or any other carrier, but is instead paid directly by the shipper." The Interstate Commerce Commission, which prior to the enactment of Public Law 104-88 was responsible for administering the Interstate Commerce Act, provided guidance with respect to determining cases such as JJR:

The Commission and the Courts have set forth standards to determine whether * * * terminal-type companies that * * * contract with railroads to perform services are rail carriers themselves * * *: First-actual performance of rail service, second-the service being performed is part of the total rail service contracted for by a member of the public, third-the entity is performing as part of a system of interstate rail transportation * * * by contractual relationship with a railroad, and hence such entity is deemed to be holding itself out to the public, and fourth, remuneration for the services performed is received in some manner, such as a fixed charge from the railroad or by a percent of the profits from a railroad. Association of P&C Dock Longshoremen v. Pittsburgh and Conneaut Dock Company, 8 ICC 2d 280, (1992), at ____, 1992 ICC LEXIS 27, at 20-21.

In the instant case, JJR picks up and drops off freight cars at the EJ&E interchange track, and delivers and removes cars from industries along its line. EJ&E is a carrier engaged in interstate commerce covered by the Railroad Retirement Act. However, applying the criteria set out in Association of P&C Dock Longshoremen, supra, we see that JJR contracts only with the shipper, not the railroad and further that JJR is paid by the shipper not the railroad. Accordingly, JJR does not fall within the criteria applied by the ICC to determine whether a terminal type company such as JJR, is engaged in interstate commerce.

These same facts distinguish JJR from Ellis and Eastern Company, which was determined to be a covered employer in B.C.D. 93-33.

JOLIET JUNCTION RAILROAD, INC.

Accordingly, based on the above discussion it is the determination of the Board that JJR is a private carrier and, as such, is not a rail carrier employer under the RRA and RUIA.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever