

EMPLOYER STATUS DETERMINATION

Owensville Terminal Company, Inc.

This is the determination of the Railroad Retirement Board regarding the status of Owensville Terminal Company, Inc. (OTCO) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA).

Information about OTCO was furnished by Mr. Jack F. Conser, Vice President of Operations for OTCO. According to Surface Transportation Board Finance Docket No. 32899, dated May 17, 1996, OTCO, a non-carrier, acquired 11.2 miles of rail branch line from Poseyville & Owensville Railroad Company, Inc. (P&O), extending from milepost 271.0 in Poseyville to milepost 282.2 in Owensville. The transaction was completed on or about April 19, 1996. Pursuant to an operating agreement with Huron and Eastern Railway Company, Inc. (HERC)(BA No. 3267), OTCO commenced operations on May 3, 1996. Mr. Conser reports that OTCO has no employees, but the line is operated one or two days per week by two persons compensated by HERC. Surface Transportation Board Docket No. 32899 further states that HERC has agreed to provide labor and equipment as needed to operate the line.

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

(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 (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *. [45 U.S.C. §231(a)(1)(i) and (iii)].

Section 1(a) of the RUIA (45 U.S.C. §351(a)) contains essentially the same definition.

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In the opinion of the majority, the evidence establishes that OTCO is currently not an employer covered by the Acts, as it is not actually operating the branch rail line it acquired from P&O. OTCO has no employees or equipment. Rather, the line is operated pursuant to an agreement with HERC, a covered employer under the Acts. That employer reports the employee service rendered to OTCO to the Board. This determination would be reevaluated if OTCO hires its own employees or if it begins utilizing a non-employer under the Acts to perform railroad service.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting)

Jerome F. Kever

CCCook:SABartholow:ALChaney:alc
OTCO1870.COV

TO: The Board

FROM: Catherine C. Cook
General Counsel

SUBJECT: Coverage Determination
Owensville Terminal Company, Inc.

Attached is a proposed coverage ruling for Board approval.

Attachment