

EMPLOYER STATUS DETERMINATION
WFEC Railroad Company

NOV 18 1997

This is the determination of the Railroad Retirement Board concerning the status of WFEC Railroad Company as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.).

Information regarding WFEC was provided by Andrew B. Kolesar III, of Slover & Loftus, counsel for WFEC, and is also from Surface Transportation Board (STB) Decision and Notice of Exemption, Finance Docket 32607. WFEC has constructed a 14-mile rail line, and began operations April 16, 1997. WFEC has entered into contracts with the Texas, Oklahoma and Eastern Railroad Company, a covered employer under the Acts (BA No. 2826) (TOE), in which TOE agreed to provide all rail service over the line. WFEC retains a residual obligation to provide common carrier rail freight service.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(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 (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad *

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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).

In cases such as this, where an entity has authority to operate a rail line, but does not actually operate the line in question, a majority of the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the STB certified carrier to determine the status of the certified carrier under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. 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 STB as

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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, a majority of the Board will find the certified entity not to be a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the STB 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.

WFEC has no employees and operations over the line are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to operate WFEC's rail line to the Board. Consistent with the above-described analysis of cases such as this, a majority of the Board finds that WFEC is not a carrier under section 1(a)(1) of the Railroad Retirement Act or sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act.

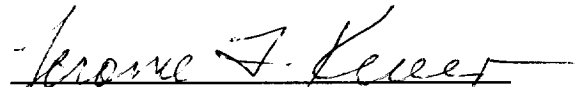
WFEC is reminded to inform the Board of any change in the operation of the rail line in this case.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting)


Jerome F. Kever