

## **EMPLOYER DETERMINATION**

### **Kansas Eastern Railroad, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Kansas Eastern Railroad, Inc. (KER) 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.).

In Surface Transportation Board Finance Docket No. 33292, decided November 21, 1996, KER filed a verified notice of exemption to acquire 139.3 miles of rail line from Burlington Northern Railroad Company. The rail line includes the segment from milepost 483.0 east of Augusta, Kansas to milepost 343.7 west of Columbus, Kansas. In a separate, but related STB Finance Docket, No. 33293, also decided on November 21, 1996, local trackage rights were granted to South Kansas and Oklahoma Railroad, Inc. (SKOR), B.A. No. 3880. Under the trackage rights agreement, SKOR agreed to handle all railroad operations for KER.

Information regarding KER was provided by Mr. Donald Orender, the accountant for Southeast Kansas Railroad Company, B.A. No. 3869. Mr. Orender stated that operations began on November 18, 1996. Mr. Richard B. Webb is owner and president of KER. Mr. Webb and Mr. Wayne Sigley each own a 50% interest in KER. Mr. Webb is also the president of SKOR and Eastern Idaho, B.A. No. 2678. According to Mr. Orender, KER is a shortline railroad that interchanges with SKOR, Southeast Kansas Railroad Company, and Burlington Northern Railroad. He stated that KER does not have any employees; however, employees compensated by SKOR are providing rail operations.

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

- (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.

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

In the opinion of a majority of the Board, the information summarized above indicates that Kansas Eastern Railroad, Inc. is currently not an employer covered by the Acts, because it is not actually operating the rail line. In fact, in STB Finance Docket No. 33419, decided July 1, 1997, SKOR filed a notice of exemption to acquire and operate 94.8 miles of KER's rail line between milepost 343.7, at Columbus, Kansas, and milepost 438.5, at Severy, Kansas. In addition, KER has no employees. Rather, its rail line is operated pursuant to an agreement with SKOR, a covered employer under the Acts. That employer reports to the Board the employee service rendered to KER. This determination will be reevaluated if KER hires its own employees or if it begins utilizing

a non-employer under the Acts to perform railroad service.

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Glen L. Bower

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V. M. Speakman, Jr. (Dissenting)

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Jerome F. Kever