

EMPLOYER STATUS DETERMINATION
4 States Railway Service, Inc., d/b/a
West Chester Railroad Co. (WCR)

This is a determination of the Railroad Retirement Board concerning the status of 4 States Railway Service, Inc., d/b/a West Chester Railroad Co. (WCR) 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).

In Surface Transportation Board Finance Docket No. 33460, decided September 30, 1997, WCR filed a verified notice of exemption to sublease and operate 6.405 miles of rail line from the Borough of West Chester (Borough) between milepost 27.4 +/-, at Station 1386+06, in West Chester, Chester County, PA, and milepost 20.995+/, at Glen Mills Station, Glen Mills, Delaware County, PA. A footnote in the STB decision stated that the owner of the property is the Southeast Pennsylvania Transportation Authority (SEPTA) and that on December 31, 1996, SEPTA leased the line to the Borough for tourist railroad operations.

Mr. John K. Fiorilla, an attorney with the law firm Watson, Stevens, Fiorilla, & Rutter, provided additional information regarding WCR. According to Mr. Fiorilla, WCR operates a tourist railroad which operates seasonally and does not carry freight at this time. WCR operates its passenger excursion trains on 7.2 miles of rail line between the Borough of West Chester, and Glen Mills, PA. According to Mr. Fiorilla, WCR began operations on September 21, 1997 and currently has no employees. Mr. Joseph C. Giacchino is the Chief Executive Officer of WCR. Mr. Giacchino, Mr. Donald W. Callender, and Mr. Melvin E. Small are the stockholders of WCR.

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

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Section 1 of the RUIA contains the same definition.

The information summarized above indicates that WCR is a carrier by rail, since it operates a passenger railway. However, WCR does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of Pennsylvania. Thus, it is not within the jurisdiction of the Surface Transportation Board. See, 49 U.S.C. 10501(a)(2)(A) (the STB has jurisdiction over transportation in a state and a place in the same or another state that is part of interstate transportation).

The Board finds that since 4 States Railway Service, Inc., d/b/a West Chester Railroad Co. does not perform service as a rail common carrier in interstate commerce, it is not an employer under the RRA and the RUIA.

V. M. Speakman, Jr.

Jerome F. Kever