

**EMPLOYER STATUS DETERMINATION
BUSINESS MEDIATION SERVICES, INCORPORATED**

This is the decision of the Railroad Retirement Board regarding the status of Business Mediation Services, Inc. (BMSI) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence is that BMSI was incorporated under the name of Beaufort Terminal, Inc., as a privately held North Carolina corporation on February 22, 1990.¹ The company handled administrative services for Beaufort East Coast Railway (East Coast) for the period February 1990 through February 1991.² At that time, the assets of East Coast were purchased by Beaufort & Morehead Railway (B&M Railway), which then conducted operations over the rail line.³ Although both BMSI and the B&M Railway were owned by Mr. Alan T. Leary, Jr., there is no evidence that BMSI provided services to the B&M Railway.

In December 1995, B&M Railway was purchased by Beaufort & Morehead Railroad (B&M Railroad), which is wholly owned by the State of North Carolina, through its Port Railway Commission.⁴ B&M Railroad continued to do business as B&M Railway. On June 19, 1997, BMSI agreed to furnish offices and utilities to B&M Railway. On July 16, 1997, BMSI and B&M Railway further agreed that BMSI would furnish administrative and clerical services, maintain Railway's files, and file state and Federal reports. BMSI and B&M Railway terminated this agreement November 17, 1997. Mr. Leary stated in letters dated November 13 and November 19, 1997, that the B&M Railway suspended service over its line during the period June 16 through November 14, 1997, due to lack of business and right of way repairs. Operations were then resumed on a limited basis.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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;

¹The Articles of Incorporation were amended effective June 25, 1997, to reflect the current corporate name.

²Beaufort East Coast Railroad Company was determined to be an employer under the Acts. Notice No. 91-54.

³The status of Beaufort East Coast Railroad as a covered employer was terminated effective February 4, 1991. B.C.D 95-36. The Beaufort & Morehead Railway was determined to be an employer under the Acts, effective February 4, 1991. B.C.D 95-46.

⁴See: North Carolina Ports Railway Commission--Acquisition of Control Exemption--Beaufort & Morehead Railway, Inc., I.C.C. Finance Docket No. 32735, (December 13, 1995) 60 Fed. Reg. 66557. The North Carolina Ports Railway Commission was held to be an employer under the Acts for the period July 1980 through November 2, 1988, when it ceased operating rail service, and began leasing state-owned rail lines to operating companies. See Legal Opinion L-89-129.

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(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
* * *.

Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231).

BMSI is clearly not a carrier by rail. It therefore does not fall within the first definition of an "employer" under the Railroad Retirement and Unemployment Insurance Acts set out above. Nor does the available evidence indicate that the second definition applies. There is no evidence that BMSI provided service to the Beaufort & Morehead Railway during the time that both were owned by Alan T. Leary, Jr. Further, although BMSI had an agreement to furnish administrative and clerical services to B & M Railroad from July 16, 1997 to November 17, 1997, the railroad has been owned by the State of North Carolina, through its Port Railway Commission, since 1995. There was thus no common ownership during that time period. The Board therefore finds that BMSI is not a covered rail carrier affiliate employer.

As BMSI meets no other definition of a covered employer under the Acts, the Board finds that BMSI is not a covered employer under the Railroad Retirement and Unemployment Insurance Acts.

Cherryl T. Thomas _____

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