

EMPLOYER STATUS DETERMINATION
Mobile and Birmingham Railroad Company (M&B)

OCT 28 1998

This is a determination of the Railroad Retirement Board concerning the status of the Mobile and Birmingham Railroad Company (M&B) 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.).

In Surface Transportation Board (STB) Finance Docket No.33560, decided March 2, 1998, Norfolk Southern Railway Company (NSR) (BA No. 1525) filed a notice of exemption to renew its lease and to operate 147 miles of rail line owned by M&B located in the State of Alabama.

Information furnished by Mr. James A. Squires, General Attorney for NSR, stated that M&B has no employees. According to Mr. Squires, M&B commenced operations in 1873 over the southern portion of its present-day line, from Mobile to Tombigbee River, Alabama. Operations from Tombigbee River to Marion Junction, Alabama, M&B's northern terminus, began in 1883. According to Mr. Squires, M&B has been continuously leased to and operated by NSR for almost a century, since March 1, 1899, and it is "an integral part of the Norfolk Southern system." Mr. Squires stated that M&B has no operations independent of NSR and does not interchange with any other carriers.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. §231(1)(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;

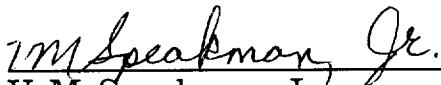
Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

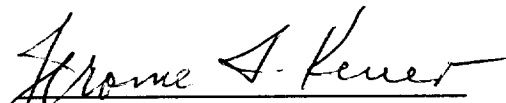
In this case, M&B reportedly has no employees and operation of its entire line of railroad has been conducted for more than 99 years by the employees of another company, which has been held to be a Class I employer under the Acts.

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Moreover, Norfolk Southern has been recognized by the STB as the operator of M&B's line of railroad. Based upon these facts, the Board finds that M&B is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.


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