

EMPLOYER STATUS DETERMINATION
Trinidad Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Trinidad Railway, Inc. (TRI) 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).

Information about TRI was furnished by its attorneys, Thomas W. Wilcox and John K. Maser III. In Interstate Commerce Commission (ICC) Finance Docket No. 32183, decided November 17, 1992 (57 F.R. 54998, November 23, 1992), TRI filed a notice of exemption to acquire and operate approximately 30 miles of rail line owned by Colorado & Wyoming Railway Company (CW) (BA No. 1724). The line is located in Las Animas County, Colorado and extends between milepost 0.0 at Jansen and milepost 30.0 at New Elk Mine, Colorado. TRI stated in the notice that it filed with the ICC that TRI would maintain the capability of operating the acquired rail line and assets, but intended that operation of the line would be by one or more Class I carriers pursuant to trackage rights agreements entered into on or before the closing date of the transaction between TRI and CW. The ICC decision stated that TRI and CW's trustee in bankruptcy had entered into a purchase and sale agreement for the line of railroad and related facilities, equipment and appurtenances thereon.

TRI acquired the rail line and related facilities on December 30, 1992 and began operations on that date. Mr. Wilcox stated that TRI presently has no operating employees and that all train operations and track maintenance are being carried out pursuant to trackage right agreements and agreements with independent contractors, respectively. Mr. Wilcox stated, however, that TRI is responsible for maintaining rail service over its rail line. TRI has entered into trackage rights agreements with the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) (BA No. 1702) and the Burlington Northern Railroad Company (Burlington Northern) (BA No. 1621), and has entered into a temporary "detour agreement" with the Southern Pacific Railroad (BA No. 1713) pending negotiation of a formal trackage rights agreement. TRI filed a notice of exemption in ICC Finance Docket No. 32228 that it had agreed to grant certain trackage rights to Santa Fe and a separate such notice in ICC Finance Docket No. 32232 that it had agreed to grant certain local trackage rights to Burlington Northern.

Section 1(a)(1) of the RRA defines an employer to include:

- (i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter

105 of Title 49.

Section 1 of the RUIA contains the same definition.

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Although TRI is not currently operating trains over the rail line that it acquired from CW, TRI has expressly stated to both this agency and to the ICC that it is responsible for maintaining rail service over that line. Moreover, TRI stated in its notice filed with the ICC that it "will maintain the capability of operating the acquired rail line and assets" (Verified Notice of Exemption Pursuant to 49 C.F.R. 1150.31, page 2, paragraph D, and page 3, paragraph E). This case is thus distinguishable from the circumstances in the Appeal of the Board of Trustees of Galveston Wharves (Galveston Wharves), B.O. 89-74, February 22, 1989, wherein this Board held that Galveston Wharves ceased to be a covered employer under the RRA and the RUIA because it had become impossible for it to operate a railroad despite its having retained ownership of the underlying real property. In this case, not only does TRI own the real estate underlying the rail line, it also maintains the capability to operate the railroad itself and has repeatedly acknowledged its responsibility and capability of doing so.

Since TRI retains the responsibility and capability of operating a railroad and is subject to ICC jurisdiction in maintaining rail operations over its rail line, it is determined that TRI is a rail carrier employer within the definition of "employer" set out above. It is therefore determined that Trinidad Railway, Inc. became a rail carrier employer under the RRA and the RUIA effective December 30, 1992, the date on which it acquired its rail line and rail-related property and began operations.

Glen L. Bower

V. M. Speakman, Jr.

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Jerome F. Kever