

EMPLOYER STATUS DETERMINATION
BNSF Acquisition, Inc.

This is the determination of the Railroad Retirement Board regarding the status of BNSF Acquisition, Inc. (BAI) 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 regarding BAI was provided by Jeffrey A. Jenson, Assistant Director of Taxes for Burlington Northern Santa Fe (BNSF)(BA No. 1621). Information was also found in the file for Washington Central Railroad Company, Inc. (WCRC). According to information on file, on December 4, 1996, WCRC was merged into a new subsidiary of BNSF called BNSF Acquisition, Inc. (BAI), with BAI being the surviving entity. According to Mr. Todd Leinbach, Controller of WCRC, WCRC operations ceased and employees last performed compensated services on December 3, 1996. Mr. Jenson indicated that no protective payments were made in 1997 by BAI/WCRC. According to information provided in July 1996 by Mr. Brig Temple, the then-President of WCRC, employees of WCRC were either retained by BNSF or hired by Columbia Basin Railroad Company, Inc. (CBRC), a new railroad company formed by some of the stockholders of WCRC, and found to be an employer covered by the Acts effective December 4, 1996 (BA No. 2644). The merger of WCRC into BAI has been approved by the Surface Transportation Board (STB) (STB Finance Docket No. 32974, decided October 24, 1996).

In a letter dated June 6, 1997, Mr. Jenson indicated that all BAI employees are working in positions connected to a rail carrier, and they work on railroad property which was formerly owned by WCRC. Subsequent to the merger with WCRC, BAI began operating over track in Washington formerly owned by WCRC. BAI is a wholly owned subsidiary of BNSF Corp., the parent company of the BNSF Railway Co. (BA No. 1621), and performs services exclusively for BNSF Railway. BAI provides exclusive access to its track to the BNSF Railway, and leases railroad rolling stock to the Columbia Basin Railway. As of June 1997, BAI had two employees.

Section 1(a)(1) of the Railroad Retirement Act (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, United States Code;

BNSF Acquisition, Inc.

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

The evidence establishes that BAI is a class III carrier. Accordingly, it is determined that BNSF Acquisition, Inc. became a rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 4, 1996, the date it merged with Washington Central Railroad Company, Inc.

V. M. Speakman, Jr.

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