

**EMPLOYER STATUS DETERMINATIONS**

**Adventure Trail, Inc. d/b/a/ Sea Lion Railroad (SLR)  
Ballard Terminal Railroad Company (BTRC)**

FEB 3 1999

This is a determination of the Railroad Retirement Board concerning the status of Adventure Trail, Inc. d/b/a/ Sea Lion Railroad (SLR) and the Ballard Terminal Railroad Company (BTRC) as employers 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.).

**Adventure Trail, Inc. d/b/a/ Sea Lion Railroad (SLR)**

In Surface Transportation Board (STB) Finance Docket No. 33486, served October 30, 1997, SLR filed a verified notice of exemption to acquire and operate a total of approximately 2.7 miles of a rail line owned by the Burlington Northern and Santa Fe Railway Company (BNSF) (B.A. No. 1621), known as the Ballard Branch, from milepost 0.09 to terminus at milepost 2.7 in the Ballard region in the City of Seattle, King County, Washington.

Information furnished by Mr. Charles H. Montange, Attorney for SLR, stated that SLR has no employees. According to Mr. Montange, SLR is a "start-up function organized by Adventure Trail, a Washington State non-profit corporation organized some years ago to preserve otherwise-to-be abandoned rail corridors for public use." Additional information was provided by Mr. Bryon Cole, Operations Manager for BTRC. The information provided indicates that SLR, BTRC, BNSF and the City of Seattle negotiated a transaction designed to preserve the Ballard Branch for rail and trail purposes. The key purpose of the transaction was to permit the continuation of rail services through a new shortline railroad (BTRC), while at the same time allowing extension of the Burke-Gilman Trail from Eighth Avenue to Eleventh Avenue and north of the Government Locks in the City of Seattle.

Subsequently, in STB Finance Docket No. AB-544X, the STB granted SLR an exemption to abandon the Ballard Branch. In the decision, it was proposed that: (1) the City of Seattle would acquire ownership of the real estate; (2) SLR would sell all track and related rail assets to BTRC; and (3) BTRC's operating agreement with SLR would transfer by assignment to the City of Seattle.

Mr. Montange stated that SLR has contracted with Ballard Terminal Railroad Company, LLC, (BTRC) to provide "all rail operations and related services." Information in file indicates that BTRC commenced operations on May 24, 1998. Mr. Montange stated that BTRC projects approximately 150 carloads per year. According to Mr. Montange, BTRC will retain all rail-related revenue and be responsible for all rail-related costs. Mr. Montange stated that BTRC interchanges with BNSF.

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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;

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).

The information discussed above provides clear evidence that SLR is not subject to the jurisdiction of the STB as a carrier by railroad. SLR sought and obtained STB authority to acquire and operate the Ballard Branch line of railroad. However, SLR subsequently obtained STB approval to abandon this line of railroad with the City of Seattle acquiring the rail line. It is clear from the evidence of record that, having obtained STB authority to discontinue operations, SLR is not a employer within the rail carrier definition. The Board therefore determines that SLR is not a rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

#### **Ballard Terminal Railroad Company (BTRC)**

Additionally, the evidence provided by Mr. Montange and Mr. Cole establishes that BTRC will operate the Ballard Branch line under an operating agreement which will transfer by assignment to the City of Seattle from SLR, which was previously held in this decision not to be a rail carrier employer under the Acts . BTRC will operate the line on behalf of the City of Seattle pursuant to a modified certificate of public convenience and necessity according to a memorandum of understanding between SLR and the City of Seattle. As mentioned above, BTRC interchanges with BNSF.

The evidence of record discussed above clearly establishes that BTRC is a rail carrier operating in interstate commerce and therefore subject to the jurisdiction of the STB. Accordingly, it is determined that the Ballard Terminal Railroad Company

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is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective May 24, 1998, the date operations began.

Original signed by:

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