

EMPLOYER STATUS DETERMINATION
R. J. Corman Equipment Company, LLC

NOV 26 2002

This is a determination of the Railroad Retirement Board concerning the status of R. J. Corman Equipment Company, LLC (RJCE) 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).

In STB Finance Docket 34165, service date February 15, 2002, R. J. Corman Equipment Company, LLC (RJCE) filed a notice of exemption to acquire from CSX Transportation Company (B.A. No. 1524), approximately 36.08 miles of rail line known as the Dawkins Subdivision located between approximately milepost 0.05 at or near Dawkins, Kentucky and approximately milepost 36.13 at or near Evanston, Kentucky. In STB Finance Docket 34166, R. J. Corman Railroad Company/ Bardstown Line sought to lease and operate the line being acquired by RJCE.

In Surface Transportation Board (STB) Finance Docket No. 34226, service date August 6, 2002, RJCE filed a notice of exemption to acquire approximately 2.16 miles of track in Wayne County, Ohio from CSX Transportation, Inc. (BA 1524). The line, known as the Wooster Industrial Track, extends between approximately milepost 16.81 and milepost 18.97. Simultaneously, a verified notice of exemption was filed in STB Finance Docket 34227 by R. J. Corman Railroad Company /Cleveland Line (BA 5333) for authority to lease and operate the line.

Mr. Kenneth D. Adams, a Certified Public Accountant for R. J. Corman Railroad Group, provided information about RJCE. According to Mr. Adams, RJCE is owned and controlled by Mr. Robert J. Corman. Mr. Corman owns and controls several railroad companies including R. J. Corman Railroad Company/Memphis Line (BA 2598), R. J. Corman Railroad Company/Pennsylvania Line (BA 2367), R. J. Corman Railroad Company/ Cleveland Line (BA 5333), R. J. Corman Railroad Company/ Allentown Line (BA 2370), and R. J. Corman Railroad/ Bardstown Line (a determination on coverage is currently pending before the Board).

R. J. Corman Equipment Company, LLC

RJCE is an asset company that has been created to acquire property and equipment for all of the various entities that are owned or controlled by Mr. Corman. Mr. Adams reported that RJCE does no business with any railroad carriers. According to Mr. Adams, all common carrier obligations on lines acquired by RJCE are assigned to one of the railroad carriers listed above.

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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The Board has set out a three-part test to be applied in this type of case. Specifically, in its decision in *Railroad Ventures, Inc.* (B.C.D. 00-47, November 7, 2000), the Board set forth the standard that it would use to determine when an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question is covered under the Acts administered by the Board. Under that standard, an entity is a carrier unless the Board finds that all three of the following factors exist:

- 1) The entity does not have as a primary purpose to profit from railroad activities;
- 2) The entity does not operate or retain the capacity to operate the rail line;

R. J. Corman Equipment Company, LLC

- 3) The operator of the rail line is already covered under the RRA and RUIA. B.C.D 00-47, at pages 4-5.

The record in this case shows that RJCE is affiliated through common ownership with other for profit carriers. The Board thus finds that RJCE does have as a primary purpose to profit from railroad activities. See note 3 in B.C.D. 00-47. We do not have to reach the other two factors, since all three need to be present to remain outside the coverage of the RRA and RUIA.

Accordingly, it is the determination of the Board that RJCE became an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts, effective February 1, 2002, the first day of the month in which it first acquired a rail line.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever