B.C.D. 00-64

DEC 21 2000

EMPLOYER STATUS DETERMINATION
Missouri Central Railroad Company
General Railway Corporation
GRC Holdings Corporation

This is the determination of the Railroad Retirement Board regarding the status of Missouri Central Railroad Company, General Railway Corporation, and GRC Holdings Corporation as employers 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 these companies was provided by John Larkin, Chief Executive Officer and President of General Railway Corporation. Information was also derived from Surface Transportation Board (STB) Decisions, Finance Docket Nos. 33805[1], 33508, and 33537.

In a decision in STB Finance Docket No. 33537 entered on January 20, 1998, the STB indicated that GRC Holdings intended to acquire approximately a 244.5 mile rail line between Vigus, Missouri, and Pleasant Hill, Missouri, and to transfer the assets necessary to operate the line to Missouri Central. In STB Finance Docket No. 33508, also decided on January 20, 1998, Missouri Central obtained authority to acquire from GRC Holdings and operate the 244.5 miles of rail line. On October 7, 1999, GRC Holdings purchased rail and real estate holdings from the Union Pacific and transferred the rail holdings and some of the real estate holdings to Missouri Central while retaining approximately 200 acres of real estate. GRC Holdings provides operating easements to Missouri Central at no cost for corridors through the real estate where mainline on-sidings will be operated. The bulk of GRC Holdings land is non-operating land. GRC Holdings is tasked with the environmental testing and cleanup of all its land and receives rental income from its land.

General Railway Corporation was incorporated in 1992. According to Mr. Larkin, General Railway attempted to purchase short line railroads beginning in 1992, but was not successful until it arranged for purchase of the rail line now owned by Missouri Central. It is a privately-held company owned by 15 stockholders. John Larkin is the largest single stockholder with a 27 percent interest. General Railway has nine employees, two of whom also work part-time for class I carriers. Its employees were first compensated on October 8, 1999. All of the work performed by employees of General Railway involves

1 This decision concerned a notice of exemption filed by Ameren Corporation, the parent company of Ameren ERC, Inc., to continue in control of Joppa & Eastern Railroad (B.A. No. 2352) as well as obtain control indirectly through Ameren ERC, Inc., of Missouri Central.

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operating the rail line belonging to Missouri Central. General Railway receives $50,000 per year from Missouri Central for management services, including operations, maintenance, administration, and overall management. General Railway has a five percent interest in the ownership of Missouri Central and has two of the seven seats on the Missouri Central's board of directors. A 95 percent interest in Missouri Central is held by Ameren ERC, Inc. Operations currently involve approximately 42 miles of track.

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 the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Board finds that the evidence of record indicates that General Railway became a rail carrier employer within the definition quoted above effective October 8, 1999, the date it began to compensate employees to operate the rail line belonging to Missouri Central.

With respect to Missouri Central, the Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that 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 unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board. We pointed out in our decision in the case of Railroad Ventures that an entity that is affiliated through common ownership with other for-profit carriers will be presumed to have as a primary business purpose to profit from the ownership of the rail line. We find that that presumption applies in this case to the

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Missouri Central, which is owned by General Railway and Ameren ERC, Inc.,. Accordingly, the Board finds the Missouri Central became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning October 8, 1999, the date it acquired its line of railroad and began operations. The Board finds that GRC Holdings, which was in effect the agency of Missouri Central in the acquisition of the rail line and the holder of some of the real estate acquired in that transaction, is not an employer under the Acts.

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