B.C.D. 02-14

EMPLOYER STATUS DETERMINATION –
Decision on Reconsideration
Central Illinois Railroad Company

FEB 13 2002

This is the determination on reconsideration of the Railroad Retirement Board concerning the status of Central Illinois Railroad Company, as an employer 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.). Central Illinois was held to be an employer effective May 1, 2001, by the Board in a decision dated September 20, 2001 (B.C.D. No. 01-73; B.A. No. 4785).

In that decision, it was stated that in Surface Transportation Board Finance Docket No. 34035, Central Illinois filed a notice of exemption to lease and operate approximately 25 miles of rail line owned by Union Pacific Railroad Company and the Canadian Pacific Rail System. Central Illinois' operations involve switching freight cars to and from the facilities of shippers and receivers in Centex Industrial Park, Elk Grove Village, Illinois, as agent for Union Pacific. Central Illinois is compensated for its services by a monthly fee paid by Union Pacific.

Central Illinois objects that the Board's decision did not note that there is no interchange agreement between Central Illinois and Union Pacific and that, consequently, all shipments that Central Illinois "transports to or from Centex Industrial Park remain in [Union Pacific's] account during such transportation." Central Illinois argues that it acts as a contract switching agent for Union Pacific, not as a common carrier terminal company or switching company; that it does not quote rates, bill shippers, collect charges, receive a division of the total freight charges from Union Pacific, or bear the cost of maintenance of the trackage over which it operates, and that it does not hold itself out to the shipping public as a rail carrier. Central Illinois contends that its

only customer is Union Pacific, and analogizes its situation to that of a private carrier, as described in the Board's decision regarding GWI Switching, B.C.D. 94-113.

Initially, as pointed out in the Board's original decision, the definition section of Part A of Subtitle IV of Title 49 of the United States Code defines "railroad" to include a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U.S.C. § 10102(6)(C)). That Act also provides that the Surface Transportation Board has jurisdiction over "transportation in the United States between a place in – (A) a State and a place in the same or another State as part of the interstate rail network" (49 U.S.C. § 10501(a)(2)). As stated in the Board's original decision, a terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U.S. v. California, 297 U.S. 175 (1936). The Board has held switching railroads to be covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts where they act in the capacity of a common carrier subject to the jurisdiction of the Surface Transportation Board.

The Board does not agree with Central Illinois' contention that it is in effect a private carrier. As pointed out by the Board in its original decision, Central Illinois conducts its operations as a liaison between Union Pacific and shippers and receivers. Even though its contract is with Union Pacific only, and it is compensated by Union Pacific (which is compensated by the shippers and receivers), by transporting freight to and from the Union Pacific, it is engaged in interstate commerce. In one sense, it provides services only to the company with which it has contracted; however, that company is a carrier in interstate commerce

and Central Illinois connects that company, Union Pacific, with a number of shippers and receivers.

The Board believes that analogy with a private carrier is misplaced. As the Board stated in its original decision, where switching operations are conducted by a plant owner for itself, these operations do not result in the plant owner being a covered employer under the Acts. In other words, where a manufacturer ships its goods to a carrier, that activity does not result in the manufacturer being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. Analogously, where a company contracts with a manufacturer to ship the manufacturer's goods to a carrier, that activity will not result in the company being a covered employer. In both cases, the shipper is a private carrier.

In the instant case, however, the company with which Central Illinois has contracted is not a manufacturer (and Central Illinois is not itself a manufacturer). Rather, Central Illinois contracts with a major rail carrier, and Central Illinois connects that carrier to shippers and receivers as directed by the carrier.

Moreover, with respect to Central Illinois' reliance on B.C.D. No. 94-113, the Board must point out that that decision was reversed on reconsideration of the status of GWI Switching Services, L.P. after GWI Switching Services, L.P. had informed the agency that the original coverage decision contained a factual error in that the company does hold itself out as a common carrier. See B.C.D. No. 96-19. Since the situation described in B.C.D. No. 94-113 was not entirely factually accurate, the Board finds that it would be inappropriate to compare the facts described therein to the case of Central Illinois Railroad Company.

Central Illinois Railroad Company

The Board therefore affirms its initial decision that Central Illinois became a rail carrier employer within the definition set out in 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 1, 2001, the date as of which it commenced operations.

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