B.C.D. 03-63

JUL 25 2003

EMPLOYER STATUS DETERMINATION
DECISION ON RECONSIDERATION
Chicago Heights Switching Company

This is a determination of the Railroad Retirement Board on reconsideration of the status of Chicago Heights Switching Company (CHSC) 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).

On November 21, 2002, in Board Coverage Decision (B.C.D.) 02-84, the Board held CHSC to be an employer under the Acts based on its providing rail-switching operations within Bulkmatic Distribution Center at Chicago Heights, Illinois as an agent for Bulkmatic Railroad Corporation (BRC). BRC is a Surface Transportation Board (STB)-authorized rail carrier unaffiliated with CHSC. BRC has been held by the Board to be a covered employer under the Acts (B.C.D. No. 02-39), B.A. No. 4411.

In its request for reconsideration, CHSC submits that it is a private carrier which does not hold itself out to the public generally. CHSC claims that it has never provided rail service as a rail common carrier and has not operated pursuant to the exemption for rail operation issued by the STB. Instead, CHSC reports that BRC is providing rail service at the Bulkmatic Distribution Center as a common carrier by rail.

The Bulkmatic Distribution Center is operated by Bulkmatic Transport Company pursuant to a long-term lease from Pork Chop Limited Partnership. Bulkmatic Transport Company is a motor common carrier and participates in the truck portion of the transportation that takes place after the transloading operation at the Distribution Center. The rail trackage at the Distribution Center is subleased by Bulkmatic Transport Company to BRC. That trackage connects with trackage owned and operated by Union Pacific Railroad and by Elgin, Joliet & Eastern Railroad Company. BRC has undertaken the common carrier responsibility for rail operations at the Bulkmatic Distribution Center.

CHSC provides rail service at Bulkmatic Distribution Center pursuant to an agreement with BRC. Pursuant to that agreement, CHSC provides rail service for Bulkmatic Transport Company only, and does not provide services to any other company or individual[1]. The information submitted regarding CHSC is supported

[1] When requested to do so by BRC, CHSC arranges for a crew to maintain the trackage over which BRC operates as a common carrier. The maintenance work is performed by employees of DOT Rail Service, Inc., an affiliate of CHSC. The Board's Audit and Compliance Section is reviewing the possible coverage status of DOT Rail Service under the Acts administered by the Board.

by a Notice of Exemption, which was filed with the Surface Transportation Board and issued March 7, 2002 (STB Finance Docket Number 34179), and provided to the Board in connection with the request for reconsideration, and an affidavit by Don L. Gibson, President of CHSC. The STB decision in Finance Docket No.34179 noted that an exemption granted to CHSC in Finance Docket No. 34146 had not been consummated and that BRC would be the operator of the line in question.

A majority of the Board finds that the additional evidence submitted in connection with CHSC's request for reconsideration indicates that CHSC provides rail-switching operations only as a private carrier. Accordingly, a majority of the Board finds that the Board's previous decision regarding Chicago Heights Switching Company should be reversed and holds that that company is not an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act.

One additional aspect of this case must be considered. Under the "Scope of Work, Compensation and Billing Procedure" contained in Appendix 2 of the contract between CHSC and BRC, CHSC is required to furnish a locomotive engineer and railroad switchman "to provide railroad switching service as agent of [BRC] and in the name of [BRC] at the Bulkmatic Distribution Center. * * *" Any CHSC employee who provides service as a locomotive engineer or railroad switchman to BRC, a covered rail carrier under the RRA and RUIA, is an employee of BRC with respect to such service and the compensation paid for it. Such service and compensation must be reported to the Board.

Michael S. Schwartz

Michael S. Schwartz

V.M. Speakman, Jr.

V. M. Speakman, Jr. *(Dissenting)*

Jerome F. Kever

Jerome F. Kever

DISSENT OF
V. M. SPEAKMAN, JR.
ON EMPLOYER STATUS DETERMINATION
CHICAGO HEIGHTS SWITCHING COMPANY

I dissent from that portion of the Board's decision on reconsideration which find that Chicago, Heights Switching Company (CHSC) is a private carrier and thus not a rail carrier under the Railroad Retirement and Railroad Unemployment Insurance Acts.

CHSC has rights to operate trains of Bulkmatic Railroad Corporation (BRC), a Surface Transportation Board (STB)-authorized rail carrier which has been held by the Board to be a covered employer under the Acts, over CHSC's trackage for the purpose of providing rail service to shippers and receivers. The switching services provided by CHSC are provided over a line engaged in interstate commerce in the name of BRC.

CHSC performs switching of the locomotives leased to it. It was granted an exemption by the STB to operate the line in question. That operation involves switching trains for BRC, a company, as mentioned above, operating in interstate commerce.

Accordingly, it is my opinion that CHSC should be held to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. I concur with the majority's conclusion that the employees of the CHSC who perform services for BRC are covered employees under the Acts.

VM Speakman, Jr.
V. M. Speakman, Jr.

7-22-03
Date