

EMPLOYER STATUS DETERMINATION

Blackwell Industrial Authority

This is the determination of the Railroad Retirement Board concerning the status of Blackwell Industrial Authority (BIA), 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).

A notice of exemption filed with the Surface Transportation Board on October 22, 1997, states that BIA and the Oklahoma Department of Transportation intended respectively to acquire approximately 19 and 16 miles of track from the Central Kansas Railway, running between Blackwell, Oklahoma and the Oklahoma/Kansas state line near Hun Newel, Kansas. See: State of Oklahoma by and Through the Oklahoma Department of Transportation and Blackwell Industrial Authority--Acquisition Exemption--Central Kansas Railway, STB Finance Docket No. 33492, 62 Fed. Reg. 59028. Mr. Eric M. Hocky, an attorney representing BIA, states that BIA is a public industrial authority formed under Oklahoma law for the purpose of preserving service over the 35 mile line. Mr. Hocky has provided a copy of an agreement between BIA, the Oklahoma Department of Transportation, and South Kansas and Oklahoma Railroad (B.A. No. 3880), whereby BIA and the Department of Transportation agree to lease the line to the South Kansas and Oklahoma for a period ending June 30, 2025 (agreement section 2.01). The South Kansas and Oklahoma agrees to operate freight service "with its own employees and with its own or leased locomotives and other equipment, unless otherwise agreed in writing" (agreement section 4.01). Section six of the agreement provides that the South Kansas and Oklahoma is to maintain the rail line, and section eight provides that the railroad shall control operation of locomotives and train movements. Mr. Hocky states that South Kansas and Oklahoma began operations over the line October 18, 1997.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), (26 U.S.C. § 3231).

It is significant that BIA sought and obtained from the STB authority only to acquire a line of railroad. BIA has no authority to conduct railroad operations over that line. Instead, the STB recognized South Kansas and Oklahoma as the entity which would provide service over the rail line owned in part by BIA. See: South Kansas and Oklahoma Railroad, Inc. -- Operation

Exemption--Oklahoma Department of Transportation and Blackwell Industrial Authority, STB Finance Docket No. 33494, 62 Fed. Reg. 59028. South Kansas and Oklahoma Railroad has been previously determined to be a covered rail carrier employer under the Acts, with service creditable from January 1, 1991. See Notice Number 91-23. The Service Agreement between BIA and South Kansas does not indicate that BIA is involved in the day-to-day operation of the

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rail service. South Kansas and Oklahoma has the right to direct and control the daily provision of rail service in accordance with its own rules, and to maintain the line.

Because BIA has no authority to operate a railroad, the Board finds that BIA is not a covered rail carrier employer. As BIA meets no other definition of a covered employer under the Railroad Retirement or Railroad Unemployment Insurance Acts, the Board determines that BIA is not a covered employer.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever