

**EMPLOYER STATUS DETERMINATION  
Eastern States Railroad, LLC**

This is the determination of the Railroad Retirement Board concerning the status of Eastern States Railroad, LLC (ESR) 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). The following information was provided by Attorney Myles L. Tobin.

ESR was formed on July 12, 2006 and rail operations on the lines controlled by ESR began on or about November 29, 2006. In Surface Transportation Board (STB) Finance Docket No. 34934, ESR filed a verified notice of exemption to acquire the lease and operating rights to 35.7 miles of rail line between Darlington, Pennsylvania and Youngstown, Ohio, owned by the Columbiana County Port Authority (CCPA)<sup>1</sup>. The line in question was operated by the Ohio & Pennsylvania Railroad Company (O&P) (B.A. No. 2264) pursuant to an interim operating agreement with the trustee of the line's former operator, the Central Columbiana & Pennsylvania Railway, Inc. (CCPR), which filed for bankruptcy in the U.S. Bankruptcy Court for the East District of Arkansas<sup>2</sup>. O&P's interim operating agreement was to terminate, pursuant to an order of the Bankruptcy Court, upon the effective date of the STB notice. The Bankruptcy Court had authorized CCPR, through CCPR's trustee, to assign its lease and operating rights to ESR.

ESR also received permanent assignment of CCPA's and CCPR's operating rights to approximately three miles of additional track running east of Youngstown, Ohio, which, in combination with the other rights ESR has obtained, facilitates interchange with Norfolk Southern Railway Company and CSX Transportation, Inc.

Mr. Tobin describes ESR as a non-operating railroad with no employees, and it does not own or operate any rail equipment. The General Manager and owner of ESR do not engage in any day-to-day railroad activities. "All rail operations on lines operated by ESR, or on which ESR has trackage rights, are being conducted by the Youngstown & Southeastern Railroad as sublessee and/or agent for ESR". The Youngstown & Southeastern subleases the line from ESR, and conducts all freight operations on the line through use of its own employees.

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<sup>1</sup> In B.C.D. 02-42 CCPA was found not to be an employer under the Acts. Applying the Railroad Ventures test to CCPA, the Board found all three factors (the entity does not have as a primary business purpose to profit from railroad activities; the entity does not operate or retain the capacity to operate the rail line, and the operator of the line is already covered or would be found to be covered under the Acts) exist.

<sup>2</sup> CCPR has been found to be an employer under the Acts (B.A. No. 2275); its continued status as an employer is being considered separately.

The Youngstown & Southeastern Railroad (Y&S) interchanges with CSX and Norfolk Southern and may (at a future time) interchange with the Ohio & Pennsylvania Railroad. In STB Finance Docket No. 34962, Y&S filed a verified

notice of exemption to sublease from ESR and operate the 35.7 miles of line between Darlington, Pennsylvania and Youngstown, Ohio. Finance Docket No. 34962 also stated that Y&S will operate, as ESR's agent and in ESR's name, the three miles of line running east of Youngstown, Ohio. In Board Coverage Decision 07-16, we found Y&S to be a covered employer under the Acts.

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;

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

In its decision regarding the employer status of 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. 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.

Applying this to the facts of ESR, the Board determines that ESR is not an employer covered under the Acts. According to information submitted by Mr. Tobin, ESR was formed to save rail service to the only remaining business on the Youngstown-Darlington line, Total Waste Logistics, LLC, which is a sister company of ESR. The second and third parts of the Railroad Ventures test are satisfied as well, inasmuch as ESR owns no rail equipment and therefore does not have the capacity to operate the line, and the subleased railroad operations are conducted by a rail carrier employer.

Therefore, the Board finds that Eastern States Railroad, LLC is not a covered employer under the test set out in our Railroad Ventures decision.

Original signed by:

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