

**EMPLOYER STATUS DETERMINATION
Plainsman Switching Company, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Plainsman Switching Company, Inc. (PSC) 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).

PSC is a newly created division of PYCO Industries (PYCO), a processor and shipper of cottonseed oil and related products, owned by member cotton gins with oil mills in Lubbock, Texas and Greenwood, Mississippi. In Board Coverage Decision (B.C.D. 08-4) we found PYCO not to be an employer covered under the Acts. Information about PSC was provided by Attorney Charles Montange, who also provided the information relied upon in making the determination regarding PYCO. PYCO was the largest shipper on the Lubbock lines of South Plains Switching, Ltd. (SAW)¹, with two plants located on those lines. Because SAW was providing inadequate rail service, PYCO applied to the Surface Transportation Board (STB) pursuant to 49 C.F.R. Part 1146 for an authorization for West Texas & Lubbock Railroad (WTL)² to provide PYCO with emergency alternative rail service. The STB granted this authority to WTL, and authorized the emergency alternative rail service for an initial period of 30 days, which it later extended to the maximum period allowed under 49 U.S.C. 11123(c)(1)³. Seeking a permanent solution to the inadequacy of SAW's rail service, in May 2006, PYCO filed an application with the STB pursuant to 49 U.S.C. 10907(b)(1)(A)(i), under which the STB may force the sale of a rail line to a financially responsible party to remedy inadequate rail service. The STB granted PYCO's application (as revised)⁴.

Pursuant to this STB decision, PYCO has STB authority to own and operate a railroad on the lines. It was PYCO's intent to purchase all SAW's property on or about November 5, 2007, and (as PYCO advised the STB) have WTL actually operate the lines. According to information previously provided by Mr. Montange, PYCO does not operate or retain the capacity to operate the line in question. It does not own or lease any locomotives, nor does it have staff assigned to provide rail service⁵. PYCO intended to contract with the WTL to

¹ SAW is an employer covered under the Acts (B.A. No. 4868).

² WTL is an employer covered under the Acts (B.A. No. 2888).

³ See STB Finance Docket No. 34802, served January 26, February 16, February 24, and June 21, 2006.

⁴ See Finance Docket No. 34890, served August 31, 2007.

⁵ Mr. Montange explains that PYCO has historically owned and operated trackmobiles to move cars spotted at or immediately adjacent to its two Lubbock cottonseed oil mills, and anticipates no change in that historic use. However, Mr. Montange notes that the trackmobiles are "manifestly inadequate to provide general switching service on the lines in question to PYCO, much less other rail customers, in Lubbock".

conduct rail service over the line, and would not retain control over the day to day operations of the line.

In a letter dated April 24, 2008, Mr. Montange advised the Board that the relationship between PYCO and WTL has changed. To "ensure continued improved service" PYCO organized, as a separate division, Plainsman Switching Division, d/b/a Plainsman Switching Company, Inc. PSC began operating the lines in lieu of WTL, on behalf of PYCO on April 14, 2008. PYCO incorporated PSC on April 23, 2008, as a wholly-owned subsidiary of PYCO. BY resolution of PYCO's board of directors, all operations of PYCO's Plainsman Switching Division were transferred to PSC effective May 1, 2008.

Mr. Montange explained that PYCO will contract with PSC for all rail switching operations on the former SAW line and will not otherwise engage in or provide rail operations. PSC has seven full time railroad employees. As PYCO did before the creation of PSC, most track repair and rehabilitation will be contracted out to Martin Railroad Construction. For the period April 14 to April 30, 2008, PSC employees were PYCO employees. From May 1, 2008 on they have been PSC employees. PYCO will continue to engage principally in the cottonseed oil business, and all rail operations are confined to PSC.

In his letter of April 24, 2008, Mr. Montange, explains that PYCO and PSC have requested that PSC be considered an employer under the Acts, citing the Board's holding in B.C.D. 01-41, Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad and Austin Area Terminal Railroad, Inc.

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).

Section 202.2 of the Board's regulations provides that:

Any company or person principally engaged in carrier business is an employer.

Section 202.3 of the Board's regulations provides in pertinent part that:

(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer.

* * *

(b) In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer.

The information summarized above indicates that from April 14, 2008 until April 20, 2008, a division of PYCO conducted railroad operations over the lines previously operated by WTL. The main business of PYCO is not and was not, however, rail operations. Pursuant to section 202.3 of the Board's regulations, and in accordance with previous Board decisions, the Board finds that only the division of PYCO which conducted railroad operations over the rail line previously operated by WTL, i.e., Plainsman Switching Division d/b/a Plainsman Switching Company, Inc., was a rail carrier employer within the definition of section 1(a)(1)(i) of the RRA and the corresponding section of the RUIA from April 14 to April 30, 2008. Effective May 1, 2008, a wholly-owned subsidiary of PYCO began to conduct railroad operations over the line. The Board finds that Plainsman Switching Company, Inc., became a rail carrier employer under the RRA and the RUIA effective May 1, 2008.

Original signed by:

Michael S. Schwartz

V. M. Speakman

Jerome F. Keever