

EMPLOYER STATUS DETERMINATION
Union County Industrial Railroad Company

This is the determination of the Railroad Retirement Board regarding the status of Union County Industrial Railroad Company (UCIR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). UCIR has not previously been determined to be an employer under the RRA and the RUIA.

Information about UCIR was furnished by Mr. Richard D. Robey, President of UCIR. UCIR is a line haul class III carrier handling approximately 900 carloads per year. It operates over approximately 4.6 miles of track in Pennsylvania. It interchanges with Conrail. See Interstate Commerce Commission (ICC) Finance Docket No. 32686, decided April 14, 1995. According to information provided by Mr. Robey, UCIR began operations on April 4, 1994. UCIR has no employees of its own; employees are provided by North Shore Railroad Company (BA 3264), an employer under the Acts.

Section 1(a)(1) of the RRA defines the term "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad
* * *. [45 U.S.C. §231(a)(1)(i) and (ii)].

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

The evidence establishes that UCIR is a class III rail carrier. Accordingly, it is determined that Union County Industrial Railroad Company at least nominally comes within the definition of employer stated above. In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating

Union County Industrial Railroad Company

the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

UCIR has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to UICR to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that Union County Industrial Railroad Company is not an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Union County Industrial Railroad Company is reminded to inform the Board of any change in the operation of the rail line in this case.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting opinion attached)

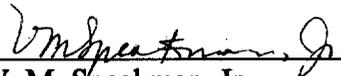


Jerome F. Kever

**DISSENT OF
V. M. SPEAKMAN, JR.
ON EMPLOYER STATUS DETERMINATION OF
UNION COUNTY INDUSTRIAL RAILROAD**

The fact that Union County Industrial Railroad Company (UCIR) has no employees, and that the employees are provided by North Shore Railroad Company does not mean that UCIR is not an employer under the Acts. Its status as a line haul class III carrier subject to ICC jurisdiction should compel a determination that it is a covered employer. See B.C.D. 94-112 (In re Texas and Oklahoma Railroad Co.). See also Cheney Railroad Company, Inc. v. Railroad Retirement Board, in the United States Court of Appeals for the District of Columbia, No. 93-1621, March 24, 1995. UCIR is clearly a rail carrier subject to ICC jurisdiction with the authority to operate a rail line.

The decision of the majority of the Board in this case sets a bad precedent and conflicts with current law. For the reasons stated, I dissent.



V. M. Speakman, Jr.

JAN 2 - 1998

Date