

EMPLOYER STATUS DETERMINATION
North American Railnet, Inc.

This is the determination of the Railroad Retirement Board regarding the status of the North American Railnet, Inc. (NARI), 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). NARI has not previously been determined to be an employer under the RRA and the RUIA.

Information about NARI was furnished by Mr. William E. Glavin, Executive Vice President of NARI. According to information provided by Mr. Glavin, NARI began operations on September 18, 1996, and currently has four employees, the first of which was compensated from September 18, 1996. Mr. Glavin stated that NARI is a privately held company engaged in the acquisition and management of short line railroads. Its first shortline railroad is the Nebraska, Kansas & Colorado Railnet, Inc., (NKCR) a wholly owned subsidiary of NARI. NARI provides administrative services to NKCR. Approximately 25% of NARI employees' time is spent on these administrative services. The remaining 75% of NARI employees' time is spent on acquiring other short line railroads. NARI provides services to no other companies.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(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;

(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 (other than trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad *

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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).

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NARI clearly is not a carrier by rail. A recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the Railroad Retirement Tax Act held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of § 3231 of that Act. Union Pacific Corporation v. United States, 5 F.3d 523 (Fed Cir. 1993).

The relevant facts of the Union Pacific case are indistinguishable from those presented by the instant case. Accordingly, the Board determines that NARI is not an employer under the Acts, as it is not under common control with its rail carrier subsidiary.

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