

**EMPLOYER STATUS DETERMINATION  
Indiana Boxcar Corporation**

This is the determination of the Railroad Retirement Board concerning the status of Indiana Boxcar Corporation (IBC), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding IBC was provided by R. Powell Felix, President of IBC. According to Mr. Felix, IBC was incorporated March 7, 1988. IBC began doing business in 1988, but had no employees until 1996. IBC has two employees; Mr. Felix has been an employee since 1996, and since 2005, Ms. Kesha Felix has also been an employee of IBC<sup>1</sup>.

According to Mr. Felix, the nature of the work the IBC employees have done has "varied considerably" over the years. Since 1988 IBC has owned a fleet of boxcars. For over the past decade IBC has also bought, sold, and leased used locomotives. In addition, IBC has performed rerailling services for derailed cars, as well as track analysis. Customers for these various services include industries served by rail, short line railroads, and state agencies.

Since 1997 IBC has been involved in the operating or management of short line railroads. Mr. Felix describes the business dealings which IBC has had with "scores of railroads over the past two decades" as ranging from "collecting car hire or lease rental for use of IBC owned equipment" to ownership or management of short line railroads. In his letter of May 21, 2007, Mr. Felix states that "IBC presently owns railcars, locomotives, vehicles, equipment, inventory, and short line railroads. Some of these assets are leased to or used by affiliated railroads and some assets are leased to unrelated third parties". In a letter dated November 6, 2007, Mr. Felix described IBC's management services as including leasing locomotives to Vermilion Valley Railroad Company, Inc., Chesapeake and Indiana Railroad Company, Inc., and Youngstown & Southeastern Railroad Company, Inc.; leasing maintenance equipment to Chesapeake and Indiana Railroad Company, Inc., and Youngstown & Southeastern Railroad Company; and maintaining a central corporate office.

While no railroads have ever had any ownership in IBC, IBC has had, and continues to have, ownership or management relationships with the following:

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<sup>1</sup> According to Mr. Felix's letter of May 21, 2007, during all times when IBC has owned or managed a short line railroad, Mr. Felix has been an employee of that railroad as well, and been "covered under railroad retirement". Ms. Felix is "also employed by IBC's subsidiary railroads and covered under railroad retirement".

- Evansville Terminal Railway Company, Inc. - indirect and direct ownership from 1997 to 2000 (company sold)<sup>2</sup>;
- Vermillion Valley Railroad Company, Inc. (B.A. No. 2396) – 100% owned by IBC, 2003 to present;
- Chesapeake and Indiana Railroad Company, Inc. (B.A. No. 2397) – direct ownership, 2004 to present;
- Tishomingo Railroad Company, Inc. (B.A. No. 4573) – 50% owned by IBC<sup>3</sup>, 2006 to present;
- Ohi-Rail Corporation (B.A. No. 3350) – not owned by IBC, rather IBC is the contracted manager of the railroad<sup>4</sup>, 2006 to present; and
- Youngstown & Southeastern Railroad Company, Inc. – 100% owned by IBC, 2006 to present<sup>5</sup>.

Mr. Felix and his wife, Sandra M. Felix, are the sole owners of IBC, and, as stated above, Mr. Felix is President of IBC. Mr. Felix also is (or has been) President of each of the railroads named above. Mr. Felix is presently General Manager of Ohi-Rail Corporation. As stated above, Mr. Felix has explained that the two employees of IBC have “dual employment with multiple railroads”. Further, when IBC became an owner of a railroad in 1997, employment for Mr. Felix was segregated between IBC’s “non-covered activities and railroad employment”. According to Mr. Felix, the compensation for both himself and Ms. Felix is segregated with appropriate railroad retirement taxes and contributions paid<sup>6</sup>. IBC maintains separate books and files individual tax returns for its related railroads. IBC pays salaries for the employment associated with its freight car and locomotive business. Mr. Felix explained that all of the railroads maintain separate banking accounts, separate books, file separate tax returns, have individually issued credit cards and/or separate credit facilities distinct from IBC, and have (with the exception of Vermillion Valley Railroad) individually billed telephone lines (either land or mobile), although the shared corporate number is also listed for each railroad. None of the track of IBC’s affiliated railroads is owned by the railroads themselves. All track is owned by unrelated third parties, such as shippers or governmental entities.

In Surface Transportation Board Finance Docket No. 34961, IBC filed a notice of

<sup>2</sup> B.C.D. 02-52 found Evansville Terminal Company, Inc. ceased to be an employer under the Acts as of December 31, 2000. Coverage of Evansville Terminal had begun July 22, 1996.

<sup>3</sup> The other 50% is owned by Vintage Locomotives, Inc., a company not related to IBC.

<sup>4</sup> IBC is not related to the owners of the railroad and no one affiliated with IBC is an owner or officer of Ohi-Rail Corporation.

<sup>5</sup> The coverage determination of Youngstown & Southeastern Railroad Company is still pending.

<sup>6</sup> Mr. Felix’s compensation is described as 27% from IBC and 73% from other railroads; Ms. Felix’s salary is 50% from IBC and 50% from other railroads.

exemption to continue in control of the Youngstown & Southeastern Railway Company (Y&S), upon Y&S's becoming a Class III rail carrier. Finance Docket No. 34961 also notes that IBC currently controls three other Class II rail carriers, the Vermilion Valley Railroad Company, Inc.; the Chesapeake and Indiana Railroad Company, Inc.; and the Tishomingo Railroad Company, 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;

(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 \* \* \*.

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 (RRTA), 26 U.S.C. 3231.

Section 202.4 of the Board's regulations defines "control" as follows:

A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person. (20 CFR 202.4)

Section 202.5 of the Board's regulations provides that a company or person is under common control with a carrier whenever the control of such company or person is in the same person, persons, or company as that by which such carrier is controlled (20 CFR 202.5).

In this case, Mr. Felix is the president of IBC and of several railroads: Vermillion Valley Railroad Company (BA No. 2396, with service creditable from April 24, 2003 to date), Chesapeake and Indiana Railroad Company, Inc. (BA No. 2397, with service creditable from August 11, 2004 to date), Tishomingo Railroad Company, Inc. (BA No. 4573, with service creditable from May 13, 2000 to date), and Youngstown & Southeastern Railroad Company, Inc. (BA No. 2287, with service creditable from December 1, 2006 to date) In addition, Mr. Felix was the president of Evansville Terminal Railway Company, Inc. from 1997 to 2000 (former BA No. 2369, with service creditable from July 22, 1996 through December 31, 2000).

Because Mr. Felix is the president of both IBC and the railroads listed in the preceding paragraph, the Board finds that IBC is under common control with those railroads within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA. The next question we must therefore address is whether IBC performs any service in connection with railroad transportation.

The evidence of record establishes that IBC does not conduct rail carrier operations itself. IBC has, however, been involved in the operating or management of short line railroads since 1997. Accordingly, the Board finds that IBC has been performing services in connection with the transportation of passengers or property by railroad for the period 1997 to 2000, when it had an ownership relationship with Evansville Terminal Railway Company, Inc., and then again from 2003 to the present, when it had ownership relationships with Chesapeake and Indiana Railroad Company, Inc. (2003 to present), Tishomingo Railroad Company, Inc. (2006 to present), and Youngstown & Southeastern Railroad Company, Inc. (2006 to present), as well as performing as the contracted manager of Ohi-Rail Corporation (2006 to present), all of which are covered rail carrier employers. The Board holds that IBC became an affiliate employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 1997, the beginning of the first year during which it was under common control with a rail carrier employer.

Original signed by:

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