

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35582

RAIL-TERM CORP.—PETITION FOR DECLARATORY ORDER

Decided: March 7, 2012

On December 14, 2011, Rail-Term Corp. (RTC) filed a petition for an order declaring that it is not a “rail carrier” within the definition at 49 U.S.C. § 10102(5), and therefore not subject to the Board’s jurisdiction. The Railroad Retirement Board (Retirement Board) determines coverage of employers and employees under the Railroad Retirement Act, 45 U.S.C. § 231 *et seq.* (Retirement Act) and the Railroad Unemployment Insurance Act, 45 U.S.C. §351 *et seq.* (Insurance Act). The Retirement Act and Insurance Act both define an “employer” as a carrier by rail subject to the jurisdiction of the Surface Transportation Board (STB or Board). See 45 U.S.C. § 231(a)(1)(i); 45 U.S.C. § 351(b). The Retirement Board held that RTC was a “covered employer” in its initial decision and on reconsideration.<sup>1</sup>

RTC appealed the reconsideration decision of the Retirement Board to the D.C. Circuit Court of Appeals.<sup>2</sup> The D.C. Circuit held the petition for review in abeyance to allow RTC to petition the STB for a declaratory order on the question of whether RTC is a rail carrier under 49 U.S.C. § 10102(5).

On January 20, 2012, RTC filed a request for a procedural schedule. Under the schedule, RTC requests that after a declaratory order proceeding has been instituted, opening comments be due on day 30; reply comments be due on day 60; RTC’s rebuttal comments be due on day 75; and a decision by the Board be served on day 135. On January 23, 2012, the American Train Dispatchers Association (ATDA) filed an opposition to the request for a procedural schedule. ATDA states that there is no reason to prolong the case by requesting additional comments and briefings.<sup>3</sup>

The petition for a declaratory order raises issues that require consideration by the Board. By this decision, the Board is instituting a proceeding under 49 U.S.C. § 721(a). An accurate and complete record is required for the Board to determine whether it has jurisdiction over RTC.

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<sup>1</sup> On January 28, 2011, the Retirement Board issued Board Coverage Decision 11-14, finding again that RTC is a “covered employer.”

<sup>2</sup> Rail-Term Corp. v. R.R. Ret. Bd., No. 11-1093 (D.C. Cir., filed Nov. 14, 2011).

<sup>3</sup> After RTC filed its petition for a declaratory order, the Retirement Board and ATDA filed comments in response.

Therefore, RTC and ATDA are directed to supplement the record in this proceeding by March 28, 2012, with copies of their respective filings submitted to the Retirement Board and D.C. Circuit in the course of those proceedings. If parties other than RTC and ATDA submitted filings before the Retirement Board and D.C. Circuit, RTC must submit copies of those filings, as well as any transcripts of proceedings before those bodies. Because this additional information will assist the Board in making a jurisdictional determination, no further briefings from the parties are necessary, and the request for a procedural schedule is denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for institution of a declaratory order proceeding is granted.
2. RTC and ATDA are directed to supplement the record by March 28, 2012.
3. The request for a procedural schedule is denied.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.