

EMPLOYER STATUS REVIEW

BCD No. 2022-16

Florida East Coast Industries, Inc. (FECI Inc.)/FECI Company LLC (FECI Company)

BA No. 9524

April 6, 2022

This is a determination of the three-member Railroad Retirement Board (Board) concerning the continued employer status of what was previously known as Florida East Coast Industries, Inc. (FECI Inc.) (B.A. No. 9524), now known as FECI Company LLC (“FECI”), as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) (collectively “the Acts”). 45 U.S.C. §231 *et seq.*; 45 U.S.C. §351 *et seq.* FECI was found to be a covered employer under the Acts as of February 1, 1990 because it was under common control with Florida East Coast Railway Company¹ (“Railway”) (B.A. No. 1510) and performed service in connection with transportation by railroad. L-90-51 (Apr. 9, 1990). FECI was considered to be a covered employer because in 1990 Railway employees were being transferred to FECI but continuing to do railroad work. *Id.*

The Board received information regarding FECI from the following sources: 1) letters dated February 6 and November 10, 2008 from FECI’s outside counsel, attorney Jay Zimble; 2) a letter dated April 9, 2008 from James E. Clark, Director, Payroll & Accounts Payable, of Railway; and 3) a letter dated June 15, 2019 from Ms. Kolleen Cobb, Executive Vice President of Florida East Coast Industries, LLC. These letters provided the following timeline of FECI activities in relation to its employer status:

- April 27, 2006
 - FECI (Florida East Coast Industries, Inc.) changed its name to FECI Company and “abandoned” the name of Florida East Coast Industries, Inc.
 - Immediately thereafter, an entirely new company was formed and adopted as its name the just-abandoned name of Florida East Coast Industries Inc.. The new Florida East Coast Industries Inc. was a new holding company owned by private equity funds managed by Fortress Investment Group LLC (Fortress).
 - Florida East Coast Industries Inc. became the parent of FECI, now its wholly-owned subsidiary. FECI directly employed employees who performed covered rail services on behalf of FEC Railway (“Railway”). FECI Company held all membership interests in Railway and Railway directly held all rail assets used in the rail operations. FECI also owned Flagler Development Company, LLC (a real estate development company), and FEC Highway Services, Inc. (a trucking company).
- January 1, 2008
 - FECI transferred some its employees who performed

¹ Florida East Coast Railway Company is now Florida East Coast Railway, LLC. B.C.D. 11-51 (Apr. 21, 2011).

covered rail services on behalf of Railway to Railway and FECI transferred its membership interests in Railway to FECR Rail Corp,² (“Rail;”) also indirectly owned by Fortress. *See Fortress Investment Group LLC, et al.*, 2007 STB Fin. Dkt. 35031 (Sept. 28, 2007).

- FECI transferred FEC Highway Services, Inc. to Rail FECI then became a holding company. FECI transferred the remainder of its non-railroad employees to its related real estate development companies. FECI Company retained no employees. FECI Company employees were last compensated on December 31, 2007. FECI Company ceased providing services in connection with the rail industry at that time.
- December 2, 2013
 - Florida East Coast Industries Inc. was converted to Florida East Coast Industries, LLC.
 - FECI was converted to FECI Company LLC.
- June 30, 2017
 - Fortress sold FEC Railway to Grupo Mexico, S.A.B. de C.V. *See Grupo Mexico, S.A.B. de C.V. and GMexico Transportes, S.A. de C.V.*, 2017 STB Fin. Dkt. 36109 (May 22, 2017).

According to Ms. Cobb’s letter of June 15, 2019, FECI , now an LLC continues to be a holding company for entities that own real estate and continues to be a subsidiary of Florida East Coast Industries LLC. Ms. Cobb also stated that Florida East Coast Industries LLC is currently a property and industrial management and real estate holding company owned by private equity funds that are managed by Fortress. Less than 1% of Florida East Coast Industries LLC is owned by individuals. Florida East Coast Industries LLC has approximately 90 employees through its subsidiary, Florida East Coast Industries Holding Corporation. None of Florida East Coast Industries LLC’s employees work in the rail industry, nor do they provide any service in connection with the rail industry. Florida East Coast Industries LLC’s employees occasionally provide legal, accounting, and IT advice to its subsidiaries. Florida East Coast Industries LLC receives no revenue from any service provided in connection with the rail industry. Ms. Cobb further stated that FECI Company still has no employees and provides no services in connection with the rail industry.³

² The Board has not determined the employer status of FECR Rail Corp.

³ Florida East Coast Industries LLC’s current subsidiaries are predominantly real estate holding companies. Ms. Cobb stated that Florida East Coast Industries LLC is an indirect parent of Virgin Trains USA Florida LLC (Virgin Trains) (formerly known as All Aboard Florida-Operations LLC), which owns a non-STB regulated intrastate railroad providing passenger service in Florida. The

Section 1(a)(1) of the RRA, 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.

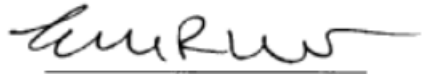
45 U.S.C. § 231(a)(1). Sections 1(a) and 1(b) of the RUIA contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act. 45 U.S.C. §§ 351(a) and (b); 26 U.S.C. § 3231.

Railroad Retirement Board (RRB) regulations at 20 C.F.R. § 202.11 state that “[t]he employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.” RRB regulations at 20 C.F.R. § 202.12(b) indicate that “...stoppage of business or operations; ... the effective date of a certificate permitting abandonment; ... [and] discharge of last employee...” are included among the types of evidence to be considered when determining whether cessation of an essential characteristic has occurred. However, 20 C.F.R. § 202.12(a) states that “consideration will be given only to those events or actions which evidence a final or complete cessation.”

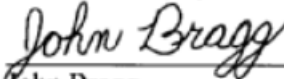
Although FECI and FEC Railway were both under common control until Fortress sold FEC Railway on June 30, 2017, the evidence of record establishes that FECI no longer employed any employees who performed covered rail services as of January 1, 2008. The evidence also demonstrates that FECI no longer provided any service in connection with covered rail transportation as of January 1, 2008. The Board, therefore, finds that what is now known as

status of whether Virgin Trains is a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act is currently pending before the three-member Board. Additionally, Ms. Cobb stated that Florida East Coast Industries LLC is also an indirect parent of DesertExpress Enterprises, LLC, which owns a non-operating railroad corridor between Victorville, California and Las Vegas, Nevada. DesertExpress Enterprises, LLC does not have any employees, nor does it currently provide any railroad service. Should the agency receive information indicating that DesertExpress Enterprises is operational, an investigation will be done regarding the employer status of such entity.

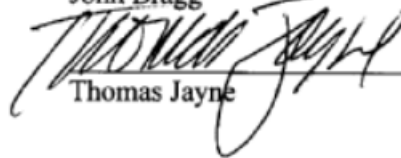
FECI Company LLC ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act as of January 1, 2008.



Erhard R. Chorlé



John Bragg



Thomas Jayne