

BCD 2022-19

**EMPLOYER STATUS DETERMINATION – DECISION ON RECONSIDERATION
Bombardier Mass Transit Corporation (BMTC)
(B.A. No. 9545)**

May 2, 2022

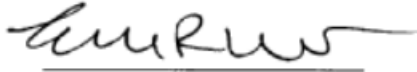
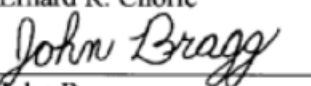
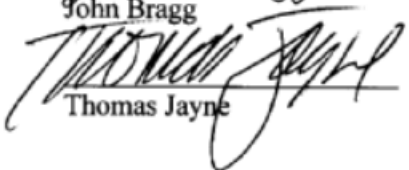
This is a decision on reconsideration of the employer status of Bombardier Mass Transit Corporation (BMTC) (B.A. No. 9545). BMTC was found to be an employer under the Railroad Retirement Act (RRA) (45 U.S.C. § 231 *et seq.*) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. § 351 *et seq.*) in Board Coverage Decision 18-18 (Aug. 28, 2018) (B.C.D. 18-18).

In Board Coverage Decision 18-18, the Board determined that BMTC is a rail carrier under the RRA and the RUIA as the provider of the train dispatching operation over the Central Florida Rail Corridor (CFRC) rail line. Specifically, BMTC was found to be an employer under the RRA and RUIA based on its contract with the Florida Department of Transportation (FDOT) to provide FDOT with dispatching services on the CFRC rail line. At the time of our initial decision, CSX Transportation (CSXT) (B.A. No. 1524), SunRail, the National Railroad Passenger Corporation (d/b/a Amtrak) (B.A. No. 8301), and Florida Central Railroad (FCRC) (B.A. No. 2586) operated on the CFRC rail line. The Board determined that all ten dispatchers who were staffing the CFRC rail line dispatch center were BMTC employees who began dispatching services on the line on July 29, 2013. Accordingly, the Board held that the dispatching unit of BMTC became an employer under both the RRA and RUIA effective July 23, 2013.

On October 29, 2018, BMTC, through their attorney representative Donald Munro, filed a request for reconsideration with respect to B.C.D. 18-18. The request for reconsideration stated that the decision was based on a factual error because since the beginning of BMTC's contract with FDOT the dispatching services were, in fact, subcontracted to a different company, Bombardier Transportation Services USA Corporation (BTS) (B.A. No. 1912), a covered employer under the RRA and RUIA. In support of the request for reconsideration, Mr. Munro provided the following: a signed declaration executed on October 22, 2018 by Debra Lees, BMTC's Senior Manager, Human Resources & Labor Relations for the United States, confirming the existence of the subcontracting agreement between BMTC and BTS for the provisioning of dispatching services; a copy of the 2013 subcontracting agreement between BMTC and BTS; a list of BTS employees who have worked as dispatchers on the CFRC rail line, recent paystubs for such employees, and a sample of their employment offer letters from BTS; and RRB Form BA-3s for BTS for tax years 2013 and 2014.

As stated above, the Board held in B.C.D. 18-18 that, based on the contract between BMTC and FDOT, the dispatching unit of BMTC was an employer under the RRA and RUIA. However, the evidence provided by Mr. Munro on behalf of BMTC clearly shows that it is BTS that is

providing dispatching services on the CFRC rail line, not BMTC. Therefore, the Board finds that BMTC is not a covered employer under the Railroad Retirement Act or Railroad Unemployment Insurance Act. Accordingly, the decision in B.C.D. 18-18 is reversed.


Erhard R. Chorlé

John Bragg

Thomas Jayne