

**EMPLOYEE SERVICE DETERMINATION
RCM**

This is the decision of the Railroad Retirement Board regarding whether the services performed by Mr. RCM for the Claremont Concord Railroad Corp. (CCRR) and Eagle Leaf Transload, LLC (ELT) constitute employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts. CCRR is an employer (B.A. 4113) under the Acts administered by the Board. ELT has been found not to be an employer under the Acts.

RCM filed a claim for unemployment benefits under the Railroad Unemployment Insurance Act in 2006. During the course of the interview in the Board's district office, RCM advised that he worked full time as an engineer, with his employer reporting his earnings as both railroad retirement earnings as well as social security earnings. Contact with the State of New Hampshire's Employment Security Department indicated that Mr. Madeja's wages were reported as 25% from CCRR and 75% from ELT. According to an Employee Questionnaire regarding his activities, RCM worked for CCRR from October 9, 2000 through September 15, 2006. He also worked for ELT from April 2003 to September 15, 2006. RCM stated that he performed services for CCRR, stating

There was no clear definition as to when I was a railroad employee and an Eagle Leaf Transload employee as I performed work at all times that were (sic) related to both employers. This was not optional.

When asked to provide a breakdown of time spent with each employer, RCM stated

It was so intermingled it is impossible to do so. There is no clear job description at either place so how can I tell you when there was no difference between working for either company.

According to RCM, all work was performed on railroad property. The services he performed included work as an engineer and as conductor; maintaining and operating two rail-to-truck facilities.¹

Information was also obtained from Ms. Lori L. Barnes, President of CCRR, regarding the services RCM provided to CCRR and ELT. In a letter dated November 20, 2006, Ms. Barnes explained that RCM was considered a full time employee of ELT, and provided customer service (loaded customer trucks with salt or cement, loaded and unloaded lumber trucks, scheduled loads for

¹ One facility was in Claremont, New Hampshire dispensing bulk ice control (BIC) salt, and one facility was in West Lebanon, New Hampshire dispensing powdered cement.

customer delivery, and weighed trucks), equipment maintenance (daily maintenance of loading equipment and scales), and inventory control for ELT as of June 14, 2004. RCM worked in the West Lebanon and Claremont facilities, and averaged approximately 168 hours per month². RCM was paid hourly and submitted a timecard to the supervisor at ELT.

Ms. Barnes also explained that RCM was initially a full time employee of CCRR from October 1, 2000 until June 14, 2004. After June 14, 2004, he was employed on a part time basis as either a conductor or engineer as needed to provide switching services and commodity unloading for various CCRR customers³. When working for CCRR, RCM worked out of Claremont Junction and White River Junction, on CCRR property. As a part-time employee, RCM worked approximately 50 hours per month⁴. RCM was paid hourly by the CCRR, submitting his timecard to the train service coordinator at the CCRR for verification. RCM's wages were reported to the Railroad Retirement Board (RRB), and calculated into the quarterly RUI payment by the CCRR to the RRB.

Ms. Barnes provided additional information in a letter dated June 11, 2007. She explained that RCM was initially hired as a laborer in 2000 for a restoration project at CCRR. Between 2000 and 2003 while working on this project for CCRR, RCM was trained as a conductor. When the restoration project came to an end in 2004, RCM filled a vacancy at ELT. He then worked part-time at CCRR when CCRR needed an additional conductor. CCRR has only three individuals who are certified locomotive engineers and conductors. Of those three, one is a locomotive mechanic and electrician, another is a mechanic and certified welder, and the third is a track inspector. In those instances when CCRR needed to operate two crews at the same time, or when CCRR's mechanics were doing mechanical work, RCM could work with the third engineer.

Section 1(b) of the Railroad Retirement Act and section 1(d)(1) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation.

Section 1(d) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

- (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B)
- he is rendering professional or technical services and is integrated

² Hours varied due to customer needs.

³ These customers included, but were not limited to, Eagle Leaf Transload customers.

⁴ RCM's hours varied due to the needs of the railroad for part-time train crew help and RCM's availability from his full time employment.

into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation * * *.

Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231 (b) and 3231 (d) of the Railroad Retirement Tax Act (26 U.S.C. § 3231 (b) and (d)).

With respect to his part-time employment with the CCRR, RCM provided services to the CCRR, and those services were directly integrated into the management and operation of the railroad employer. Therefore, the Board finds that RCM was integrated into the employer's staff or operations, as is specified in paragraph (B) and (C). Accordingly, it is the decision of the Board that RCM's services for the Claremont Concord Railroad Corp. were properly treated as employee service.

Regarding the services which RCM provided to ELT, as Eagle Leaf Transload has been found not to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts, services performed for ELT by RCM did not constitute employee service under the Railroad Retirement and Railroad Unemployment Insurance Act.

Original signed by:

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