

**B.C.D. 10-3**  
**EMPLOYER STATUS DETERMINATION**  
**Pan Am Railways, Inc. (PARI)**

**FEB 01 2010**

This is a determination of the Railroad Retirement Board concerning the status of Pan Am Railways, Inc. (PARI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA). The status of PARI under the Acts has not previously been considered.

PARI is a holding company that was formerly known as Guilford Transportation<sup>1</sup> Industries, Inc. Information regarding the activities of PARI was provided by Cynthia Scarano, the Executive Vice President of PARI. PARI is a wholly owned subsidiary of Pan Am Systems, Inc. In turn, PARI is the owner of all or a majority of the shares of stock of its railroad subsidiaries. PARI presently has no salaried employees, and the management of PARI consists of a Board of Directors and three officers. PARI formerly provided real estate management services to its rail subsidiaries and PARI collected a management fee in proportion to the property owned by the subsidiary. This payment practice was discontinued at the end of 2008 for some of PARI's subsidiaries.

Currently, PARI is providing similar services to other rail subsidiaries to include: Northern Railroad, Vermont and Massachusetts Railroad, Portland Terminal Company, and Stonybrook Railroad. Information provided by the company indicated that several officers of PARI held specific positions of authority in subsidiary railroads. Mr. Eric Lawler is the treasurer of Boston and Maine (BA 1102), Portland Terminal (BA 4105) and Maine Central Railroad (BA 1107). Mr. Robert Culliford is the secretary of all the previous railroads. Mr. David Andrew Fink is the president of Pan Am Railways. Mr. David Armstrong Fink is the president of the three previously mentioned railroads (BA 1102, 4105, and 1107). These four individuals (Mr. Lawler, Mr. Culliford, Mr. D. Andrew Fink, and Mr. D. Armstrong Fink) are the directors or officers of PARI. It appears that the majority of the actions by the directors of PARI consist of Board Decisions which affect the major business activities of the subsidiary railroads.

---

<sup>1</sup> In legal opinion L-82-169 Guilford Transportation Industries, Inc. was held not to be a railroad employer under the Acts because at the time of that decision (July 13, 1982) Guilford was limiting its involvement with its subsidiary rail carriers to activities that included new acquisitions, overall directing of policy and coordination of the subsidiaries, and was not performing service in connection with transportation of passengers or property by rail. The decision specifically noted that should Guilford consolidate all or part of its operations, the Board would find that Guilford would be performing such service.

Examples of the major activities of the rail subsidiaries determined by the management of PARI include review and approval of credit agreements entered into by PARI and its subsidiaries and the formation of a joint venture with Norfolk Southern Corporation to create a new rail carrier pursuant to which a subsidiary would maintain a 50% interest in the new carrier. Each of these votes authorized one or more of the officers to execute certain agreements necessary to effectuate the vote.

Further information received indicates that the previous railroads are not providing active freight service. Additionally, PARI performed real estate management services to Springfield Terminal Railway Company which leases rail lines and operates rail carrier services over those leased lines. The file indicates that PARI ceased receiving fees from Springfield Terminal in 2008 as well.

Sections 1(a)(1)(i) and (ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i) and (ii)), insofar as relevant here, define 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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Section 202.4 (20 CFR 202.4) of the Board's regulations provides that:

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 stockownership 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 company or person.

Section 202.5 (20 CFR 202.5) of the Board's regulations provides that:

A company or person is under common control with a carrier, whenever the control (as the term is used in 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

The evidence of record establishes that PARI is under common control with its covered rail carriers by the common ownership of Pan Am Systems, Inc., the ultimate holding company. Further, PARI performs a service for several of those carriers. Section 1(a)(1)(ii) clearly states that "any service" in connection with the transportation of person or property by rail (with exceptions that do not apply to PARI) performed by an entity which controls, or is under common control, with a rail carrier will result in that entity being "covered" under the Acts. The active management of a rail carrier's real estate has been considered such a service. [Southern Development Company v. Railroad Retirement Board, 243 F.2d 351 (C.A. 8 1957); B.C.D. 07-01, CSX Real Property, Inc.]. In this case, the evidence in the file indicates that PARI continues to provide "real estate management services" which would include all property owned by the subsidiary carriers. All property owned by the subsidiary carriers would include railroad rights of way and lines of railroad. This function is a step in the direction of more directly serving the subsidiaries that was previously discussed in the Guilford Transportation decision found at L-82-169. PARI has taken additional steps to consolidate real estate management into its regular course of business, whereas Guilford Transportation limited its involvement with its subsidiaries only to directing policy and acquiring new subsidiaries. The real estate management for fees function in which PARI has engaged and continues to engage represents a more direct involvement in the direct support of railway operations for its subsidiaries and reflects a change in the relationship between PARI and its subsidiaries as compared to the relationship Guilford Transportation had with its subsidiaries. In addition, the fact that PARI reviews the operations of its rail subsidiaries and votes to approve or disapprove major activities to be undertaken by the rail subsidiaries indicates a much higher degree of involvement by PARI in the operation of the rail subsidiaries than was evidenced in the case of PARI's predecessor, Guilford Transportation Industries, Inc.

Accordingly, it is determined that Pan Am Railways, Inc. became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective April 1, 2006, the date on which PARI began operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever