

EMPLOYER STATUS DETERMINATION
Southwest Railway Services, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Southwest Railway Services, Inc. (SRS) 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). Information about SRS was furnished by Jack C. Norman the controller of SRS and its affiliates.

Mr. Norman reported in the responses to the Audit and Compliance questionnaire that SRS was incorporated in Texas on October 29, 2009. SRS began operations on November 1, 2009. The owner of SRS is TNW Corporation which also owns Texas North Western Railway (BA 3757), Texas Gonzales and Northern Railway (BA 2866), Nebraska Railway (BA 3790), and Texas Rock Crusher Railway (BA 3893). TNW Corporation and SRS have several common directors and officers. Robert F. Murchison serves as Chairman and Director of both entities. Dennis Prewett serves as President and Director of both entities. Burk Murchison, Margaret Murchison, and Elise Murchison all serve as officers of both entities.

SRS's business consists of providing track maintenance services and materials for railroads. SRS spends 98% of its business time providing these services for the railroad subsidiaries of TNW Corporation. SRS's operations are designed to excavate rock to be used as ballast for constructing track and maintain track using tamping and ballast regulators. SRS's assets are used to provide the materials and services for the other subsidiaries of TNW Corporation.

Mr. Norman reports that SRS has no written contracts with any other rail carrier and SRS does not lease equipment to or from any other entity. The STB has not made any rulings regarding SRS's status and the IRS has not ruled on the applicability of the Railroad Retirement Tax Act (RRTA) to SRS. Mr. Norman further reports that 98% of revenue for SRS is received from the rail carriers under TNW Corporation. As of May 31, 2010, Mr. Norman reported that SRS did not have any employees.

Section 1(a)(1) of the RRA defines the term "employer" to include:

- (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 contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act.

It is clear from the record in this case that SRS is not a rail carrier employer under section 1(a)(1)(i) of the RRA and section 1 of the RUIA. Turning to the definition in subparagraph 1(a)(1)(ii), we find that SRS is under common control with Texas North Western Railway (BA 3757), Texas Gonzales and Northern Railway (BA 2866), Nebraska Railway (BA 3790), and Texas Rock Crusher Railway (BA 3893). All the preceding entities are owned by TNW Corporation. Additionally, it is clear that ownership and leadership of TNW Corporation and SRS is fully intermingled. Five officers have the same title in TNW Corporation and SRS. Further, Mr. Norman indicated that SRS was formed for the purpose of providing specific services to the railroads under TNW Corporation's control. Prior to the formation of SRS, TNW's other railroads performed the tasks necessary to operate SRS. The formation of SRS is an attempt to consolidate the excavation, processing and transport of ballast rock to TNW's other railroads.

Based on the evidence of record, we find that SRS provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA.

In accordance with the above discussion we find that Southwest Railway Services, Inc., became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 1, 2009, the date SRS began operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Keever