

**EMPLOYER STATUS DETERMINATION  
Austin Steam Train Association**

This is the determination of the Railroad Retirement Board concerning the status of Austin Steam Train Association (ASTA), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding ASTA was provided by Ms. Holly Doggett, Executive Director of ASTA, as well as the website of ASTA. In 1956 the Southern Pacific (SP)<sup>1</sup> gave one of its retiring steam engines to the city of Austin, Texas. According to Ms. Doggett, in 1986, the SP closed its operations through Austin, and sold 163 miles of its lines to the city. The lines extend from Giddings, Texas, through Austin, to Burnet, Marble Falls, and Llano (all in Texas). The city of Austin chartered ASTA as a 501(c)(3) nonprofit corporation on July 11, 1989, to operate as a scenic railroad. ASTA's mission is "to preserve, interpret and re-create the first-hand experience of historic steam railroading for the enjoyment and edification of today's families and the generations to come". ASTA leased the engine from the city, and restored the engine, through a privately-financed effort. ASTA acquired passenger cars, and acquired trackage rights over the 33-mile route between Cedar Park and Burnet. Operations began on July 25, 1992. ASTA continues to operate 2-hour excursions from Cedar Park through the Texas hill country to Burnet. It also operates a shorter excursion from Cedar Park to Bertram, Texas. Ms. Doggett also stated that ASTA has trackage rights on the Capitol Metro main line<sup>2</sup>.

ASTA has six employees; all employees perform work related to the operations of the vintage passenger train. ASTA owns the property it is headquartered at in Cedar Park; all employees perform maintenance work on the equipment at this location. No rail carriers do business with ASTA, nor do any rail carriers have a financial interest in ASTA. No individual has a controlling interest in ASTA as well as in a rail carrier, nor is any individual an officer or director of ASTA as well as an officer or director of a rail carrier.

Section 1(a)(1) of the Railroad Retirement Act 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 \* \* \*.

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<sup>1</sup> According to ASTA's website, the engine was used on the Houston & Central subsidiary of the Southern Pacific Company (SPC). SPC, B.A. No. 1713, merged into Southern Pacific Transportation Company on November 25, 1969. Southern Pacific Transportation Company (maintaining B.A. No. 1713), was covered until February 1, 1998, when it merged with the Union Pacific (UP), B.A. No. 1715.

<sup>2</sup> "Capitol Metro" is the Capitol Metropolitan Transportation Authority, Austin's bus and metrorail system. According to agency files, the investigation into Capitol Metro's status as an employer under the Acts was closed September 8, 1998.

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) & (b)).

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

\* \* \* transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The rail service provided by ASTA may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. ASTA does not transport passengers from a place in one State to a place in the same or another State as part of the interstate rail network. Rather, it provides excursion service between two points entirely within one State. ASTA does not interchange with any railroad, and does not “through-ticket” any passengers or freight onto any other rail carrier. Therefore, under section 10501(a) (2)(A), above, ASTA would not be subject to Surface Transportation Board jurisdiction and would therefore also not fall within the definition of “employer” set out in section 1(a)(1)(i) of the Railroad Retirement Act. Based upon the evidence of record, we find that the Austin Steam Train Association is not an employer under the RRA and the RUIA.

Original signed by:

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