

**EMPLOYER DETERMINATION
WHITE RIVER SCENIC RAILROAD, INC.**

This is a determination of the Railroad Retirement Board concerning the status of the White River Scenic Railroad, Inc. (WRSR) 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).

In May 1997, WRSR entered into a "Rail Passenger Operating Agreement" (Agreement) with Missouri and Northern Arkansas Railroad Company, Inc. (MNA), B.A. No. 2863. The Agreement authorized WRSR to operate excursion trains on MNA's rail line. The 64 mile rail line is between milepost 403.00 at Pyatt, Arkansas and milepost 324.00 at Slyamore, Arkansas. Pursuant to the Agreement, WRSR began operations on May 9, 1997.

Mr. James Duckett, an attorney with the law firm Kemp, Duckett, Hopkins & Spradley, provided additional information regarding WRSR. According to Mr. Duckett, WRSR operates an entertainment business. Presently, its service component consists of an intra-state tourist excursion railway. WRSR operates its passenger excursion trains on 64 miles of MNA's rail line. Its thirteen employees were first compensated on May 17, 1997. Mr. Peter Peitz is the Chief Executive Officer of WRSR. Mr. Peitz, Mr. Benny Magness, and Mr. Sean Reed are the stockholders of WRSR. WRSR does not interchange with any railroad. Mr. Duckett stated that the only formal relationship which WRSR has with other railroads is the contract agreement mentioned above.

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

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Section 1 of the RUIA contains the same definition.

The information summarized above indicates that WRSR is a carrier by rail, since it operates a passenger railway. However, WRSR does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of Arkansas. Thus, it is not within the jurisdiction of the Surface Transportation Board. See, 49 U.S.C. 10501(a)(2)(A)(the STB has jurisdiction over transportation in a state and a place in the same or another state that is part of interstate transportation). WRSR does not interchange with any railroad, and does not transfer its passengers onto any other rail carrier.

The Board finds that since White River Scenic Railroad, Inc. does not perform service

as a rail common carrier in interstate commerce, it is not an employer under the RRA and the RUIA.

Glen L. Bower

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