B.C.D. 00-46

EMPLOYER STATUS DETERMINATION
SLA Property Management, Ltd. (SLAM)

NOV 07 2000

This is a determination of the Railroad Retirement Board concerning the status of SLA Property Management, Ltd. (SLAM) 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).

Mrs. Teresa V. Foltz, Secretary/Treasurer of SLAM, provided information regarding SLAM. According to Mrs. Foltz, SLAM is a limited partnership which owns and maintains the 38 miles of land and track on which the Sisseton Millbank Railroad (SMRR) (B. A. No. 3661), a Class III regional railroad under the Acts since July 1, 1989, provides freight service. According to Mrs. Foltz, "SMRR owns the engines, hires the engineers and provides service to the four elevators along the SLA track." Mrs. Foltz stated that the Farmers Coop Elevator, Ralph Schmidt, John Wenschlag, Art Weinkauf, S and H Cattle Company, Steve Hannasch, Jason Hannasch and Ted Horning own shares in both the SMRR and SLAM. Of a total of 3,780 outstanding shares of SMRR and the partnership interest in SLAM, Farmers Coop Elevator of Sisseton owns 1,380 shares of SMRR and 48.2761 percent of SLAM; Ralph Schmidt owns 60 shares of SMRR and 1.7241 percent of SLAM; John Wenschlag owns 720 shares of SMRR and 20.6896 percent of SLAM; Art Weinkauf owns 60 shares of SMRR and 1.7241 percent of SLAM; S and H Cattle Company owns 300 shares of SMRR and 8.6207 percent of SLAM; Steve Hannasch owns 180 shares of SMRR and 1.7241 percent of SLAM; Jason Hannasch owns 180 shares of SMRR and 1.7241 percent of SLAM; and Ted Horning owns 120 shares of SMRR and 3.4483 percent of SLAM (for totals of 3,000 shares of SMRR and 87.9311 percent of SLAM).

Gary Hansen represents the Farmers Coop Elevator on the SLAM Board of Directors, according to Mrs. Foltz. Mrs. Foltz stated that the use of the track is leased to SMRR for 50 % of the freight charge per car. According to the SLAM Limited Partnership Agreement, SLAM was formed for the sole purpose of acquiring all of the SMRR branch line. Additional information obtained from a coverage audit reveals that SLAM owns no facilities, does not perform work for any other company and receives 100 percent of its revenue from SMRR freight car revenue. Mrs. Foltz stated that SLAM was formed on March 30, 1982. SMRR interchanges with the Soo Line (B. A. No. 1606) and the Burlington Northern Santa Fe Railroad (B. A. No. 1621).

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)), insofar as relevant here, defines 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***.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The information summarized above indicates that SLAM is not a rail carrier employer under the definition of employer in subparagraph (i) quoted above.

This conclusion, however, leaves open the question as to whether SLAM is an employer under the definition in subparagraph (ii), commonly referred to as the "affiliate definition."

Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it is owned by or under common control with a rail carrier employer and if it provides "service in connection with" railroad transportation. If it fails to meet either condition, it is not a covered employer within section 1(a)(1)(ii).

From the information summarized above, it appears that SLAM is an employer under the definition in subparagraph (ii), as explained in more detail below.

Mrs. Foltz stated that both SLAM and SMRR are owned and managed by the same shareholders. Additionally, SLAM derives 100 percent of its operating revenue from the SMRR, a covered class III rail carrier employer under the Acts. Accordingly, the Board finds that SLAM is under common control with the SMRR.

Section 202.7 of the Board's regulations (20 CFR 202.7) defines service in connection with railroad transportation as follows:

> The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is 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, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

According to Mrs. Foltz, SLAM owns and maintains the track on which SMRR performs freight service. Since a rail carrier cannot operate a train without track on which to run and the maintenance provided therefore, the Board finds that SLAM is providing a service in connection with railroad transportation.

The information summarized above indicates that SLAM is under common control with and performing a service in connection with railroad transportation for SMRR. Accordingly, it is determined that SLA Property Management, Ltd. became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act [(45 U.S.C. §231(a)(1)(ii)] and the corresponding provision of the Railroad Unemployment Insurance Act effective July 1, 1989, the date on which SMRR, the rail carrier with which SLAM is under common control and for which SLAM performs services, became an employer under those Acts.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever