B.C.D. 01-10

EMPLOYER STATUS DETERMINATION
West Isle Line, Inc.

JAN 12 2001

This is the determination of the Railroad Retirement Board regarding the status of West Isle Line, Inc., 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 regarding West Isle was provided by Mr. Jeffrey O. Moreno, counsel for West Isle. West Isle is a wholly-owned subsidiary of Western Farm Services, Inc. It commenced operations on January 7, 1998, on 5.25 miles of track which it obtained from The Burlington Northern and Santa Fe Railway Company, with which it intersects. It provides rail service upon request to Western Farm Services, averaging 400 loaded cars annually moved into the Western Farm Services facility. West Isle reportedly has no employees. All rail operations and track maintenance are provided by subcontractors. It filed a notice of exemption with the Surface Transportation Board to acquire the rail line and rail assets (January 7, 1998; STB Finance Docket No. 33532).

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.

The Surface Transportation Board has jurisdiction over common carriers engaged in the interstate transportation of passengers or property by railroad pursuant to section 10501 of title 49 of the United States Code. A common carrier may be defined in general as one which holds itself out to the public as engaging in the business of transporting people or property from place to place for compensation. It is the right of the public to demand service that is the real

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criterion determinative of an entity's character as a common carrier. In contrast, a private carrier is one which, without making it a vocation or holding itself out to the public as ready to act for all who desire the service, undertakes by special agreement in a particular instance only, to transport property or persons from place to place. Private carriers thus undertake not to carry for all persons indiscriminately, but rather to transport only for those with whom they see fit to contract individually. The Railroad Retirement Board has followed the distinction made by the Surface Transportation Board, which is judicially supported in The Tap Line Cases, 234 U.S. 1 (1913); also International Detective Service, Inc. v. Interstate Commerce Commission, 595 F.2d 862, 865 (D.C. Cir. 1979).

In this case, West Isle does not hold itself out to the public as engaging in the business of transportation of persons or property over the line in question. Rather, it performs services over that line only for the one company with which it is affiliated. Accordingly, the Board determines that West Isle is a private carrier and is not a common carrier under the Acts.

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