B.C.D. 01-33

EMPLOYER STATUS DETERMINATION APR 04 2001
Tracks Traffic and Management Services, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Tracks Traffic and Management Services, Inc. (Tracks), 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 Tracks was provided by Mr. Robert N. Gentile, Vice President – Law, General Counsel and Secretary. Tracks was incorporated in 1988 and is owned by Transtar, Inc. Transtar also owns Birmingham Southern Railroad Company (B.A. No. 4507), Elgin, Joliet & Eastern Railway Company (B.A. No. 1309), The Lake Terminal Railroad Company (B.A. No. 4221), McKeesport Connecting Railroad (B.A. No.4334), and Union Railroad Company (B.A. No.4351). Prior to October 2000, Transtar owned Bessemer and Lake Erie Railroad Company (B.A. No. 1303), Duluth, Missabe and Iron Range Railway Company (B.A. No. 1617), and Pittsburgh & Conneaut Dock Company (B.A. No. 4249), as well. Also prior to October 2000, Transtar was jointly owned by USX Corporation and Transtar Holdings, Inc. In October 2000, USX Corporation acquired Transtar Holdings' interest in Transtar, and Transtar Holdings, Inc., acquired Bessemer and Lake Erie Railroad Company, Duluth, Missabe and Iron Range Railway Company, and Pittsburgh & Conneaut Dock Company.

Mr. Gentile states that Tracks "provides consolidated support functions, including payroll, claims, operating systems, engineering, benefits and information systems" to all eight of the above-named railroads. Mr. Gentile states that more than 90 percent of Tracks' "total business time" is spent doing business with the eight rail carriers mentioned above.

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).

There is no evidence that Tracks is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether it is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it provides "service in connection with" rail transportation and if it is owned by or under common control with a rail carrier employer.

Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

> * * * 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. (20 CFR 202.7).

Tracks does not dispute that the services it provides to the railroads mentioned above are provided in connection with rail transportation. Prior to the October 2000 transaction, Tracks was owned by Transtar, which also owned the eight railroads mentioned above. Accordingly, Tracks was owned by the same company which owned the eight railroads and was therefore under common control with those eight railroads at that time. As a result of the October 2000 transaction, Transtar was divested of three of those railroads. However, it continued to own Tracks and five of those railroads. Accordingly, Tracks continued to be under common control with those five railroads after the transaction. Therefore, it is determined that Tracks is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts as of January 1, 1988. Service and compensation

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of Tracks employees may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations.

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