B.C.D. 01-48

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Employer Status Determination
Watchmasters, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Watchmasters, Inc., as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following information was provided by Mr. F. F. Stuart, President and Chief Executive Officer of Watchmasters.

Watchmasters was incorporated August 28, 1998, and began operations September 16, 1998. It is a privately held company owned and run by Mr. Stuart and by Mr. J. T. Brock, both of whom are retired former employees of the Florida East Coast Railway Company[1]. Watchmasters hires individuals as independent contractors to act as watchmen on an as needed basis.

Watchmasters is notified that its services are required when Florida East Coast Railway receives a request by an outside party (such as utility companies, telecommunication companies, and other contractors and entities) seeking to construct on or adjacent to the railroad's right-of-way. The watchmen are assigned by Watchmasters, but perform their jobs essentially unsupervised.

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;
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> (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

[1] Mr. Stuart and Mr. Brock both left their employment with the railroad industry in 1994.

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> 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).

Watchmasters clearly is not a carrier by rail. Further, the available evidence indicates that it is not under common ownership with any rail carrier nor is it controlled by officers or directors who control a railroad. Therefore, Watchmasters is not a covered employer under the Acts.

This conclusion leaves open, however, the question whether the persons who perform watchman services under arrangements with Florida East Coast Railway should be considered to be employees of those railroads. Section 1(b) of the Railroad Retirement Act and section 1(d) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation. Section 1(d)(1) of the RRA further defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
>
> (ii) he renders such service for compensation * * *.

Section 1(e) of the RUIA contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the RRTA (26 U.S.C. §§ 3231(b) and (d)).

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The focus of the test under paragraph (A) is whether the individual performing the service is subject to the control of the service-recipient not only with respect to the outcome of his work but also with respect to the way he performs such work.

The evidence submitted shows that the watchmen are assigned to their positions by the individuals who run Watchmakers and that they are otherwise unsupervised. Accordingly, they are not supervised by employees of Florida East Coast Railway, and the control test in paragraph (A) is not met. Moreover, those individuals are not rendering professional or technical services and are not integrated into the staff of the employer, so that the test contained in paragraph (B) is not met. Further, they are not rendering personal services that are integrated into the employer's operations. Thus, the test in paragraph (c) is not met. The Board therefore finds that the watchmen do not perform employee service for Florida East Coast Railway.

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