B.C.D. 01-75

SEP 26 2001

EMPLOYER DETERMINATION
Southern California Railroad Company

This is a determination of the Railroad Retirement Board concerning the status of Southern California Railroad Company (SCRC) 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 SCRC was provided by Mr. Richard C. McClure, Chairman, President & Chief Executive Officer of SCRC. According to Mr. McClure, he, Mr. Robert J. Geib and Mr. Michael H. Minton own SCRC.[1] Mr. McClure stated that SCRC began operations and first compensated its four employees beginning November 1, 2000. Mr. McClure stated that SCRC is a switching operation that operates on land and approximately 2 miles of trackage owned by United States Gypsum (USG). More specifically, SCRC provides switching services for USG and acts as a logistics liaison between USG and the Union Pacific Railroad (UP). The UP interchanges with USG at Plaster City, California. Mr. McClure reported that SCRC's main objective is to deal with the logistics of breaking down "empties" (empty freight cars) and spotting them in the proper tracks. In addition to blocking and building trains per customer specifications, SCRC is present to physically interchange with the UP crew, which comes onto USG track to runaround the empties and leave the USG yard with their loads to head back on the old branch line approximately 27 miles east to the UP main line at El Cenro. Mr. McClure reported that SCRC had not sought Surface Transportation Board authority for its operation because the owner of private property (USG) had hired SCRC to handle all switching responsibilities on USG tracks.

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1 Mr. McClure, Mr. Geib and Mr. Minton also serve as officers/directors of Texas North Orient Corporation (BA No. 3884) and of Gulf Colorado and San Saba Railway Corporation (BA No. 3891).

Southern California Railroad Company

Section 1(a)(1) of the RRA (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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The term "railroad" under the Interstate Commerce Act includes a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U.S.C. § 10102(6)(C)). It is well settled that a terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U.S. v. California, 297 U.S. 175 (1936). Consistent with this, the Board has held terminal railroads to be covered employers under the RRA and the RUIA where they act in the capacity of a common carrier subject to the jurisdiction of the Surface Transportation Board (formerly the Interstate Commerce Commission). See, e.g., Camp Chase Industrial Railroad, B.C.D. No. 95-41, and GWI Switching Services, L.P., Decision on Reconsideration, B.C.D. No. 96-19. Conversely, where switching operations are conducted by an operator that, 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, the Board has held that such operator is a private carrier and not an employer under the RRA and the RUIA. See, e.g., Joliet Junction Railroad, Inc., B.C.D. No. 96-48 and The Great Miami & Western Railway Company, B.C.D. No. 94-105.2.

Southern California Railroad Company

The evidence in this case indicates that SCRC currently provides its switching services to only one customer, United States Gypsum. There is no evidence that SCRC holds itself out to the public as engaging in the business of transportation of persons or property over the line in question. In fact, the rail line is on private property that belongs to SCRC's sole customer. Accordingly, the Board finds that SCRC does not operate as a rail common carrier and thus is not an employer under the RRA and the RUIA.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever