B.C.D. 01-83

DEC 03 2001

EMPLOYER STATUS DETERMINATION
Keokuk Electric Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Keokuk Electric Railway, Inc., 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 Keokuk was provided by R. L. Taylor, President of Keokuk. In 1993, Mr. Taylor, doing business as Keokuk Electric Railway, provided "sporadic tourist passenger service between Keokuk, Iowa and LaHarpe, Illinois. * * *" This service was again provided in 1996. The enterprise was incorporated in 1996 as Keokuk Electric Railway, Inc., and ceased shortly thereafter. Keokuk plans to begin operations in 2002 as an excursion railroad operation within the state of Iowa. It will operate local tourist electric trolley cars within the city of Keokuk and on the city-owned bridge.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," to include

> (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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

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A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

> * * * transportation in the United States between a place in –
>
> (A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The rail service to be provided by Keokuk may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are to be transported solely within one state, under section 10501(a)(2)(A) above, Keokuk would not be subject to Surface Transportation Board jurisdiction and would therefore also not fall within the definition of "employer" set out in section 1(a)(1)(i) of the Railroad Retirement Act. Therefore, Keokuk will not be a carrier by railroad. There is also no evidence in the record that it is under common control with a carrier or is intended to provide any services to a carrier[1].

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[1] In regard to the operations which were performed in 1993 and 1996 by R. L. Taylor doing business as Keokuk Electric Railway, it should be noted that section 1(a)(2) of the Railroad Retirement Act provides in pertinent part that "the term 'employer' shall not include - * * * (ii) any street, interurban, or suburban electric railway, unless such railway is operating as part of a general diesel-railroad system of transportation * * *." R. L. Taylor doing business as Keokuk Electric Railway in 1993 and 1996 was an interurban electric railway not operating as part of a general diesel-railroad system of transportation as described in section 1(a)(2). Accordingly, R. L. Taylor doing business as Keokuk Electric Railway in 1993 and 1996 was not an employer under the Acts.

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The Board finds that Keokuk is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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