B.C.D. 02-86

NOV 25 2002

EMPLOYER STATUS DETERMINATION
Wisconsin Great Northern Railroad, Inc.

This is the decision of the Railroad Retirement Board concerning the status of the Wisconsin Great Northern Railroad, Inc. as an employer under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351-369) (RUIA).

Information regarding Wisconsin Great Northern Railroad (WGN) was provided by Mr. Gregory Vreeland, President and General Manager of WGN. In addition, information was obtained from WGN's website. WGN is an historic excursion and dinner train operating on approximately 20 miles of former Chicago & Northwestern track between the northern Wisconsin towns of Spooner and Springbrook along the Namegokon River. WGN combines historic railroad equipment with special events to entertain and educate all age groups. WGN was founded in 1997 and operates locomotives from the 1940's and a fleet of mahogany interior passenger cars built between 1910 and 1930. [1]

Section 1(a)(1) of the RRA (45 U.S.C. § 231(a)(1)), defines the term "employer," insofar as is relevant here, 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 [45 U.S.C. § 231(a)(1)];
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more

[1] WGN previously anticipated carrying freight for a lumber company. However, Mr. Vreeland advises the business never materialized and operations are limited to tourist passenger service within Wisconsin.

> 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.

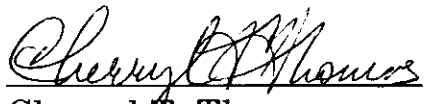
Sections 1(a) and (b) of the RUIA (45 U.S.C. §§ 351(a), (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3213).

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 State and a place in the same or another State as part of the interstate rail network. See 49 U.S.C. § 10501(a)(2)(A).

The rail service provided by WGN 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, WGN 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 RRA. In addition, there is no evidence in the record that WGN is under common control with a carrier or is intended to provide any service to a carrier. Therefore, WGN does not meet the definition of employer under either the RRA or RUIA.

Wisconsin Great Northern Railroad, Inc.

The Board finds that Wisconsin Great Northern Railroad, Inc. is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.



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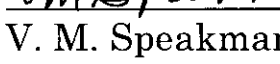

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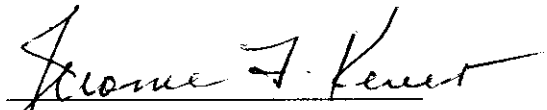

Jerome F. Kever