

EMPLOYER STATUS DETERMINATION

Branson Scenic Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Branson Scenic Railway, Inc. (BSR) 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 BSR was provided by Thomas L. Johnson, its President. Mr. Johnson stated that BSR currently has 20 employees which include four full time permanent employees and sixteen seasonal employees. BSR's employees began services on July 30, 1993. BSR began operations on July 31, 1993. BSR contracts with Missouri and Northern Arkansas Railroad (M&NA) to operate over the 20 miles of M&NA's trackage, departing from Branson, Missouri, with no intermediate stops. Under contract, M&NA provides two engineers to run the train. M&NA also provides all dispatching, track inspection and maintenance.

Mr. Johnson stated that BSR operates a passenger tourist train. Presently, its service component consists of an intra-state tourist railway, offering passenger excursions from Branson, Missouri traveling north or south roundtrip. He stated that the only formal relationship BSR has with a railroad is the contract agreement with M&NA. BSR does not interchange with other railroads.

Section 1(a)(1) of the RRA defines an "employer" to include:

- (i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49.

Section 1 of the RUIA contains essentially the same definition.

Subchapter I of chapter 105 of Title 49 is the portion of the Interstate Commerce Act which sets forth the provisions governing the jurisdiction of the Interstate Commerce Commission (ICC) over rail transportation. It provides in pertinent part that the ICC has jurisdiction over transportation by rail carrier to the extent that the transportation is in the United States and is between a place in a State and a place in another State (49 U.S.C. §10501(a)(2)(A)). The Interstate Commerce Act provides specifically, in pertinent part, that:

- (b) The Commission does not have jurisdiction under subsection (a) of this section over--

- (1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country....[49 U.S.C. §10501(b)(1)].

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In this case, BSR is a carrier by rail since it operates a passenger railway. However, BSR does not transport passengers from a place in one State to a place in another State. Rather, it provides excursion service roundtrip entirely within one State. BSR does not interchange with any railroad. BSR's operation of its tourist railroad is not, therefore, subject to the ICC's jurisdiction.

Because it is not a carrier by rail which is subject to the ICC jurisdiction, it is determined that Branson Scenic Railway, Inc. is not an employer under the RRA and the RUIA.

Glen L. Bower

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