B.C.D. 02-35

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Employer Status Determination
RailAmerica Intermodal Services

This is the decision of the Railroad Retirement Board regarding the status of RailAmerica Intermodal Services (RIS) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

RIS was an inactive corporation prior to beginning operations September 1, 2000. It is wholly-owned by RailAmerica Transportation Corporation which, in turn, is a wholly-owned subsidiary of RailAmerica, Inc[1]. RIS operates the intermodal ramp in East Peoria, Illinois, for the Toledo, Peoria & Western Railway Corporation, a covered employer under the Acts (B.A. No. 2346) and a wholly-owned subsidiary of RailAmerica, Inc.[2] RIS operates machinery that lifts trailers and containers on and off intermodal rail cars; operates the jimmies that move the containers and trailers to and from parking places; and processes the paperwork for the acceptance and return of the containers and trailers.

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;
>
> (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 * * *.

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).

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[1] See page 448 of *Moody's Transportation Manual*, 2000.
[2] See page 448 of *Moody's Transportation Manual*, 2000.

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RIS clearly is not a carrier by rail. However, it is under common ownership with the Toledo, Peoria, a covered employer under the Acts, since both companies are direct or indirect subsidiaries of RailAmerica, Inc. Accordingly, RIS would be a covered employer under section 1(a)(1)(ii) of the RRA if it provides a service in connection with railroad transportation within the meaning of that section.

The evidence of record establishes that RIS provides its services directly in support of the railroad carrier service provided by the Toledo, Peoria & Western Railway Corporation. Based on the evidence of record, we find that RIS is providing a service in connection with railroad transportation.

This case is distinguishable from the factual situation addressed in the Board's decision in B.C.D. 96-82 with respect to CSX Intermodal, Inc. (CSXI) wherein CSXI was found not to be performing a service in connection with railroad transportation. CSXI was an intermodal marketing company which also operated a motor carrier operation and, through subsidiaries, operated intermodal terminals. It provided services with respect to freight shipped in containers or trailers that could be stacked on rail cars. It provided a door-to-door delivery service under a single bill of lading usually by a combination of truck-rail-truck transportation and, in some cases, by barge. It arranged for the pick-up of a shipper's containers or trailers, either using its own truck owner-operators or through an independent drayage firm; delivered the containers or trailers to one of its intermodal terminals and placed them on flat cars of the carrier that services that terminal for line-haul to another intermodal terminal at which point the trailers or containers are removed from the flat cars and are delivered to their ultimate destination either by CSXI owner- operators or independent drayage firms.

In deciding CSXI, the Board examined four factors: 1) the physical relation of the affiliate's operations to the rail operations; 2) the history and origin of the affiliate; 3) for whose benefit the affiliate's services are performed; and 4) the amount of the affiliate's business with the public. In the analysis of these factors, the instant case is distinguishable from CSXI. 1) The operations of RIS are performed at an intermodal yard where it unloads rail cars of the Toledo, Peoria & Western Railway. 2) RIS began operations in September 2000 to provide services to its rail affiliate. 3) The services performed by RIS are exclusively for the benefit of the Toledo, Peoria & Western Railway. The fourth factor has no bearing on this case.

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Based on the above, it is determined that RIS is an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act as of September 1, 2000, the date as of which it commenced operations.

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