B.C.D. 04-32

Employer Status Determination
Southern Wisconsin Grain, L.L.C.

JUN 17 2004

This is the decision of the Railroad Retirement Board regarding the status of Southern Wisconsin Grain, L.L.C. (Southern Wisconsin) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence is that Southern Wisconsin was formed by Landmark Service Co-operative (formerly known as Union Cooperative Association of Evansville), and ConAgra Foods, Inc. to operate a grain elevator near Evansville, Wisconsin. Landmark and ConAgra each own a 50 percent interest. Landmark operated an older and smaller grain elevator nearby, while ConAgra Foods of Omaha, Nebraska, is one of the largest packaged food companies in the United States, reporting $3.6 billion in sales as of the third calendar quarter of 2003, marketing brands such as Armour, Banquet, Chef Boyardee, and Wesson. The Southern Wisconsin facility, which began operations May 1, 2002, with 3 employees, includes five concrete grain storage bins served by approximately 6,750 feet of rail line interchanging with the Union Pacific Railroad. Grain is delivered for storage by truck, and shipped by rail car through the Union Pacific interchange. There is no evidence that Landmark, ConAgra, or Southern Wisconsin own or control a rail carrier.

Section 1(a)(1) of the Railroad Retirement Act (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;
>
> (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;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. §351(a) and (b) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. § 3231.

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Southern Wisconsin is not a carrier by rail. As a grain elevator company, Southern Wisconsin clearly engages in the "elevation, transfer in transit, * * * storage, or handling of property transported by railroad", and consequently performs a service in connection with rail transportation within the meaning of the RRA and RUIA. See: Duquesne Warehouse Co. v. Railroad Retirement Board, 326 U.S. 446 (1946); and Interstate Quality Reloads v. Railroad Retirement Board, 83 F. 3d 1463 (D.C. Cir., 1996). However, there is no evidence that Southern Wisconsin is under common ownership with any rail carrier or controlled by officers or directors who control a railroad. Because it does not meet both criteria under RRA section 1(a)(1)(ii) and RUIA section 1(a), Southern Wisconsin therefore is not covered under the Acts as a rail carrier affiliate employer. Southern Wisconsin meets no other definition of a covered employer under the Acts, and consequently the Board finds that Southern Wisconsin is not a covered employer.

Original signed by:

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