B.C.D. 04-52

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Employer Status Determination
Employee Service Determination
Grant Railway Services, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Grant Railway Services, Inc., as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Board received information regarding Grant from both Grant and ISG Cleveland Works Railway, an employer under the Acts (B.A. No. 4276). Information received from both companies is consistent in its description of Grant's operations. Grant is a privately-held corporation which was incorporated December 18, 2003, began operations February 15, 2004, and engages in the inspection and repair of all freight cars owned by ISG Cleveland Works Railway. It also performs inspection and repair on other common carrier owned cars inbound and outbound from the ISG Cleveland plant. All services are within ISG Cleveland facilities with ISG Cleveland equipment and materials. Grant "employees provide both daily and planned maintenance via direction from [ISG Cleveland] supervision and operational personnel. Priority for work is the responsibility of [ISG Cleveland] personnel. All work is approved and signed off on by [ISG Cleveland] on a daily basis." "All [Grant] employees are under the direction, control and supervision of [ISG Cleveland]." Grant does not provide services for any company other than ISG Cleveland and has no other source of revenue.

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;
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> (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).

Grant clearly is not a carrier by rail. Further, the available evidence indicates that it is not under common ownership with any rail carrier nor is it controlled by officers or directors who control a railroad. Therefore, Grant is not a covered employer under the Acts.

This conclusion leaves open, however, the question whether the persons who perform work for Grant under its arrangements with ISG Cleveland should be considered to be employees of the railroad rather than of Grant. Section 1(b) of the Railroad Retirement Act and section 1(d) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation. Section 1(d) (1) of the RRA further defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rending professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
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> (ii) he renders such service for compensation * * *.

Section 1(e) of the RUIA contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the RRTA (26 U.S.C. §§ 3231(b) and (d). The focus of the test under paragraph (A) is whether the individual performing the service is subject to the control of the service-recipient not only with respect to the outcome of his work but also with respect to the way he performs such work.

The evidence submitted shows that work performed by Grant employees is performed under the direction and control of ISG Cleveland employees on ISG Cleveland premises.

Accordingly, the Board finds that the control test in paragraph (A) is met, and employees of Grant are considered to be employees of ISG Cleveland effective with the beginning of operations on February 15, 2004.

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