B.C.D. 04-58

NOV 2 4 2004

Employee Service Determination
L S
W H C
P F M

This is the decision of the Railroad Retirement Board regarding whether the services performed by Messrs. LS, WHC, and PFM for CSX Transportation constituted employee service 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). CSXT is a covered employer under those Acts.

WHC is currently receiving an annuity under the Railroad Retirement Act with an annuity beginning date of January 1, 1995. He stated that he is a former CSXT employee who "inspected new railroad cars [built] at car plants." The inspections took place at the plants where the cars were being built. As a former CSXT employee, WHC worked on and repaired freight cars and supervised work. As a contractor, he had no set hours for work. He worked when he needed to inspect cars. He was paid by the day upon submitting an invoice. He did not work alongside CSXT employees. CSXT would call WHC and let him know where the cars were being built. His work was not inspected or approved. The contract involved covered a period from April 1, 1997, to December 31, 1997, and provided compensation of $200.00 per day plus lodging, meals, and travel for days that he was at the car builder's plant.

PFM is currently receiving an annuity under the Railroad Retirement Act with an annuity beginning date of January 1, 1993. He stated that he is a former CSXT employee who inspected new freight cars. He last worked in June 2000. The inspections took place at the plants where the cars were being built. As a former CSXT employee, WHC worked as a supervisor. As a contractor, he had no set hours for work. He did not work alongside CSXT employees. His work was not inspected or approved. The contract involved covered a period from January 1, 2000, to December 31, 2000, and provided compensation of $200.00 per day plus lodging, meals, and travel for days that he was at the car builder's plant.

LS is currently receiving an annuity under the Railroad Retirement Act with an annuity beginning date of January 1, 2001. He stated that he is a former CSXT employee who inspected new freight cars before CSXT took possession of them.

The inspections took place at the plants where the cars were being built. LS had no set hours for work. He stated that he set his own schedule, working usually two to six hours per day. He was paid by the day upon submitting an invoice. He did not work alongside CSXT employees. CSXT would call LS and let him know about new cars to be inspected. The contract involved covered a period from January 1, 2000, to December 31, 2000, and provided compensation of $200.00 per day plus lodging, meals, and travel for days that he was at the car builder's plant.

Section 1(b) of the Railroad Retirement Act and section 1(d)(i) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation.

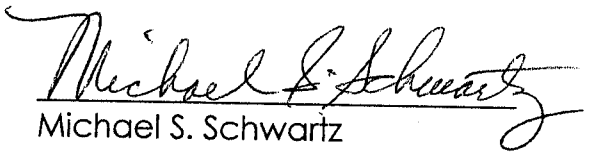
Section 1(d) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

> (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 rendering 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
>
> (ii) he renders such service for compensation * * *.

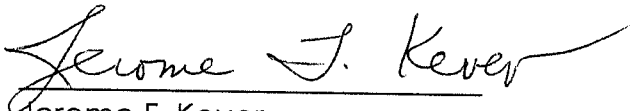
Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. §§ 3231(b) and (d)). While the regulations of the RRB generally merely restate this provision, it should be noted that section 203.3(b) thereof (20 CFR 203.3(b)) provides that the foregoing criteria apply irrespective of whether "the service is performed on a part-time basis * * *."

WHC, PFM, and LS were clearly not supervised in the performance of their services. In addition, they were not integrated into the staff of CSXT, and they were not providing services on the property of CSXT.

Therefore, a majority of the Board[1] finds that service of WHC, PFM, and LS for CSXT under the contracts described above constituted self-employment and not employee service.



Michael S. Schwartz



Jerome F. Kever

[1] The Labor Member abstained.