B.C.D. 05-20

Employee Service Determination
CC

MAY 17 2005

This is the decision of the Railroad Retirement Board regarding whether the services performed by CC 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.

CC is a retired CSXT employee with an annuity beginning date of September 1, 2003. He stated that he provided services to CSXT as a contractor from September 1, 2001, through December 31, 2001. He "assisted in the transition of work in the Automotive Services Group in areas including, but not limited to[,] monitoring performance of contractors, providing support in customer meetings, cross-training group employees and other transition assistance as needed." He worked in CSXT's general office building. He stated that his work as a contractor was the same as his work as an employee, as he "was training a new director for [his] position." He worked "in the same department, at the same work location, for the same manager" and "the work was the same * * *." He was not required to follow a set work schedule; however, he worked full time. He worked alongside CSXT employees. CSXT provided office space, telephone, office supplies, and furniture. He earned $23,195.00 in 2001 as a contractor from CSXT.

Information supplied by CSXT indicates that CC worked for CSXT from September 1, 2001, through December 31, 2001, and from August 1 to August 15, 2002, to "transition cross training and restructuring the Automotive Service Group's Customer Service roles and responsibilities. * * * [He] monitored performance of contractors, provided support in customer meetings and other transition assistance as needed." "CC's responsibilities in 2001, immediately following retirement were similar to his previous job responsibilities, but

encompassed reorganization recommendations resulting from attrition. However, his responsibilities in 2002 were diminished and did not include any management responsibilities[,] focusing exclusively as a customer service interface."

CC worked on CSXT premises and his "work assignments and direction principally came from Bill Braman – A.V.P. Automotive Customer Service & Operations whom he was accountable to * * *. CC used CSXT office equipment.

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
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> (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 Board 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 * * *."

From September 1 through December 31, 2001, CC performed duties similar to those he performed as an employee and was supervised in the performance of these services. Therefore, the Board finds that the service CC performed for CSXT for the period September 1 through December 31, 2001, constituted employee service under sections 1(d)(i)(A) and (c) of the RRA and the corresponding provisions of the RUIA. When CC returned to work for a short time in August 2002, his duties were diminished and it appears that he worked in the capacity of a consultant for the two-week period. The Board is not able to find that his performance of service during this period of time in August 2002 constituted employee service.

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