B.C.D. 05-3

EMPLOYER STATUS DETERMINATION JAN 31 2005
Fruit Growers Dispatch, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Fruit Growers Dispatch, Inc., as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Fruit Growers Dispatch was formed May 24, 2004, and is a subsidiary of Fruit Growers Express Company, a covered employer under the Acts (B.A. No. 6401), which, in turn, is owned by CSX Corporation. CSX Corporation also owns CSX Transportation, Inc. (CSXT), a covered rail carrier employer under the Acts (B.A. No. 1524). Fruit Growers Dispatch took over clerical employees of the New York Central Lines, LLC, a covered employer under the Acts (B.A. No. 2385), and provides clerical services to CSXT. Fruit Growers Dispatch has ten employees.

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).

There is no evidence that Fruit Growers Express is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether Fruit Growers Express is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it provides "service in connection with" rail transportation and if it is owned by or under common control with a rail carrier employer.

Fruit Growers Dispatch is under common control with CSXT, a covered rail carrier employer under the Acts, since both companies are owned by CSX Corporation. Fruit Growers Dispatch provides clerical services to CSXT, and is therefore providing services in connection with rail transportation. Accordingly, the Board finds Fruit Growers Dispatch to be a covered employer under the Acts as of May 24, 2004, the date as of which it was formed.

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever