B.C.D. 05-33

EMPLOYER STATUS DETERMINATION
TransitAmerica Services, Inc.

JUL 15 2005

This is the determination of the Railroad Retirement Board concerning the status of TransitAmerica Services, 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.).

Information regarding TransitAmerica was provided by Edward J. Fishman, counsel for TransitAmerica Services. TransitAmerica Services is a wholly-owned subsidiary of TransitAmerica, LLC, which was held to be a covered employer under the Acts as of December 9, 2002 (B.A. No. 3795). TransitAmerica, LLC, entered into a contract dated October 17, 2003, with the Burlington Northern Santa Fe Railroad Company (BNSF) to provide interchanging of loaded and empty freight cars. More specifically, Mr. Fishman advised that the agreement requires that Transit America, LLC move loaded and empty freight cars between the BNSF interchange and the Herzog Contracting Corporation Facility near St. Joseph, Missouri. TransitAmerica, LLC, is also responsible for maintaining and repairing the interchange track.

Under a letter agreement entered into on June 8, 2005, TransitAmerica Services agreed to provide for its parent, TransitAmerica, LLC, the switching services and track maintenance and repair specified in the contract between TransitAmerica and the Burlington Northern Santa Fe Railroad Company.

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).

The evidence of record establishes that TransitAmerica Services is a carrier operating in interstate commerce. Accordingly, it is determined that TransitAmerica Services became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective June 8, 2005, the date as of which it commenced railroad switching operations.

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