B.C.D. 05-5

EMPLOYER STATUS DETERMINATION FEB 22 2005
Train Travel, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Train Travel, 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.).

Train Travel began operations January 1, 1989. It is wholly owned by Laurence I. Coe who also is sole owner of Coe Rail, Inc., a covered employer under the Acts (B.A. No. 3266) since August 23, 1984. According to Mr. Coe, Train Travel:

> * * * operates a dinner train and a scenic train on tracks owned by Coe Rail, Inc. using rail cars owned by Coe Rail, Inc. Coe Rail, Inc. charges a fee each time the dinner train operates. Train Travel, Inc. also performs management services in the form of administrative activities including accounting, billing and payroll preparation, and maintenance functions for Coe Rail, Inc. Train Travel, Inc. had revenue from operations and fee income during 2003 of $1,224,318. Train Travel, Inc. employed a total of 71 people during 2003 with an average employment of 30 people consisting of the following types of employees: 2 executives, 1 office manager, 1 cook, 3 part-time cooks, 2 part-time dishwashers, 10 office and reservation assistants, 2 maintenance people and 9 part-time wait staff. * * *
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> The employees of Coe Rail, Inc. are also non-rail employees of Train Travel, Inc. and receive separate compensation for their work in each separate company. Their work for Coe Rail, Inc. consists of operating the train. In addition to providing train cars and pull service to Train Travel, Inc. transfers rail cars [sic] from CSX's main line over Coe Rail, Inc.'s track to various business[es] located along its right of way. Coe Rail, Inc. had

revenue from operations during 2003 of $198,935. Coe Rail, Inc. employed a total of 2 people during 2003 with an average employment of 2 people.

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 the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

> * * * if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

There is no evidence that Train Travel 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 Train Travel 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. If it fails to meet either criterion, it is not a covered employer within section 1(a)(1)(ii).

Train Travel is owned by the same individual who owns Coe Rail, a covered employer under the Acts. Accordingly, Train Travel is under common control with a rail carrier. Also, Train Travel provides services for Coe Rail.[1] The question of what constitutes "services in connection with the transportation of passengers or property by railroad" has been litigated on several occasions. In Adams v. Railroad Retirement Board, 214 F. 2d 534 (9th Cir. 1954), the Court held that the provision of "accounting services, the services of a purchasing department, * * * correspondence and stenographic services * * * bridge and building services, a safety engineer and repairs for its automotive equipment and its general rolling stock" by a carrier's affiliate were services in connection with transportation so as to render the affiliate an employer under the Acts. Adams, at 542. In Southern Development Co. v. Railroad Retirement Board, 243 F. 2d 351 (8th Cir. 1957), the Court, at 355, held that a railroad affiliate which owned and operated an office building "almost exclusively for use by a railroad company for ticket selling and general offices

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[1] Because Train Travel operates an excursion railroad, this case may be an appropriate one for the Board to apply coverage to only part of the enterprise, as specified in section 202.9 of the Board's regulations. That section authorizes the Board to determine that some identifiable and separable part of an enterprise is to be covered, rather than the entire enterprise, where the basis for coverage is not the principal part of the enterprise, and certain other requirements are met. However, in order to apply limited coverage in this case, the Board requires a request by the company at issue. In this case, Train Travel has not made such a request.

could reasonably be considered [to be performing] a service connected with and supportive of rail transportation" and was an employer under the Acts. In the instant case, Train Travel "performs management services in the form of administrative activities including accounting, billing and payroll preparation, and maintenance functions for Coe Rail, Inc." Accordingly, the Board finds that Train Travel is performing services in connection with rail transportation for its affiliate, Coe Rail.

Accordingly, it is determined that Train Travel became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act as of January 1, 1989, the date as of which it commenced operations. Service and compensation of Train Travel employees may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations.

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