

B.C.D. 11-73
EMPLOYER STATUS DETERMINATION
Professional Locomotive Services, Inc.

July 27, 2011

This is the determination of the Railroad Retirement Board concerning the status of Professional Locomotive Services, Inc. (PLS), 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 about PLS was provided to the agency by Ms. Laura Rodriguez, an employee of PLS¹. In response to questions about PLS, Ms. Rodriguez stated that PLS is wholly owned and privately held by Ms. Adela Ortega, the Chief Executive Officer of PLS. Ms. Rodriguez also stated that no railroad has a financial interest in PLS either through direct or indirect stock ownership, as a parent corporation or indirect stock ownership through a parent company. No individual owns both a controlling interest in PLS and a controlling interest in any rail carrier.

PLS was incorporated on March 21, 1996, and began operations on April 1, 1996. PLS currently has fifteen employees, 100% of whom work in positions related to business connected with rail carriers. According to its Articles of Incorporation, the purpose of PLS is:

To provide professional locomotive services on site or in house including repairing locomotives services, leasing locomotives, and possibly rebuilding locomotives, along with buying and selling the locomotive parts necessary to repair or rebuild the locomotives.

PLS owns a locomotive rebuild shop, as well as all locomotive service equipment, including cranes, jacks, welders, and air compressors. The maintenance, service, building, and rebuilding of locomotives is done either at PLS's East Chicago, Indiana facility, or on the customer's site. Ms. Rodriguez advised the agency that 98% of PLS's work performed is for the Kankakee, Beaverville & Southern Railroad (B.A. No. 2337), Lake Michigan Indiana Railroad², and Pioneer Rail Corporation³, and 80% of PLS's revenue is from these customers. Mr. Rodriguez also stated that PLS "employees do not directly perform services for any rail carriers, only as Professional Locomotive Services, Inc. employees".

According to PLS's website, ([.e-pls.com](http://e-pls.com)), PLS services customers nationwide, and its customers include chemical, steel, and pharmaceutical companies, as well as power generating plants, and short line railroads. PLS offers locomotive service 24 hours a day, seven days a week. PLS programs include: daily inspection (FRA); 30/60/92 day inspections (FRA); semiannual and annual inspections (FRA); load testing; retorque; radio remote control inspection and installation; consulting; steam cleaning and detailing; training; light to heavy repairs; parts both new and remanufactured; wheel

¹ Ms. Rodriguez did not provide her title.

² Lake Michigan Indiana Railroad is an entity once covered as an employer, but terminated May 7, 2003, and its assets were acquired by ISG Railway, Inc. (B.A. No. 4412).

³ We assume Ms. Rodriguez means "Pioneer Railcorp", which is not a covered employer itself, but which has fifteen subsidiaries which are covered rail carriers.

cutting on-site; engine overhaul on-site; truck rebuilds on-site; rewire on-site; and infrared thermography technology.

The evidence of record further indicates that the Federal Railroad Administration does not require PLS to pay user fees. In addition, the Surface Transportation Board has not made any ruling regarding the status of PLS, and the Internal Revenue Service has not ruled on the applicability of the Railroad Retirement Tax Act to PLS.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), which 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).

PLS is clearly is not a carrier by rail. Further, the available evidence indicates that it is not under common ownership with any rail carrier nor controlled by officers or directors who control a railroad. Therefore, PLS is not a covered employer under the Acts.

Finally, because we find that: (1) PLS is an independent contractor within the holding of the United States Court of Appeals for the Eighth Circuit in its decision in Kelm v. Chicago, St. Paul, Minneapolis and Omaha Railway Company, 206 F.2d 831 (8th Cir. 1953); (2) the evidence indicates that while the nature of the work requires these individuals to sometimes work on the premises of the particular railroad, and they may use some of that railroad's supplies or equipment, PLS also owns a locomotive rebuild shop where services are performed, and it also owns locomotive service equipment, including cranes, jacks, welders, and air compressors, and (3) no employee of PLS has claimed that his/her service should be covered under the RRA and the RUIA, there is no need to consider employee service issues in great detail in this decision.

Original signed by:

Michael S. Schwartz

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