

**Employer Status Determination
Southeastern Rail, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of Southeastern Rail, Inc. (SRI) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following information was provided by Mr. Paul Roberts, formerly President, and Mr. John Cameron, currently President of SRI. The information below, including the quotations, is from a letter of September 12, 1995, from Mr. Roberts.

SRI began operations and first compensated employees on April 1, 1994. It has 20 employees and performs "heavy construction work, and its primary business consists of railroad construction, reconstruction, repair, and maintenance for freight railroads and private industries that ship by rail. All of its employees are engaged in such construction work." "SRI bids on and contracts for railroad construction, reconstruction, repair, and maintenance work for freight railroads and private industries * * *."

SRI is privately held. "* * * The controlling interest and majority of all capital stock issued and outstanding in SRI is owned by the three SRI officers who manage the company, Paul Roberts, Randy Rigdon, and John Cameron, and who constitute the majority of its Board of Directors." Each initially owned 170 shares out of 1000. Later, Paul Roberts and Randy Rigdon sold their stock to John Cameron & Robert Griffin who together now own 51 percent of the outstanding stock of SRI.

"No officers or directors of SRI are officers or directors of a rail carrier."

"SRI owns trucks, trailers, backhoes, generators, air compressors, welders, a Burro crane, Kershaw tie crane, ballast regulator, spiker, rail lifters, rail drills and saws, tie inserters, and related construction equipment."

A sample list of companies for which SRI performs work included 5 railroads and 15 other companies. A sample contract provided that SRI furnishes all machinery, tools, etc., and is responsible for workers' insurance coverage. The cost may be either a lump sum amount or unit price, with progress payments.

CAGY Industries, Inc., a holding company, owns 49 percent of the stock of SRI. It is also the sole owner of certain railroads, including the Chattanooga and Chickamauga Railway Company and the Redmont Railway Company.

In 1994 SRI received approximately 23 percent of its revenue from its affiliated railroads; in 1995 it received approximately 44 percent of its revenue from those railroads.

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Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(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 (other than trucking service, casual service, and the casual operation of equipment and 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).

Section 202.4 of the Board's regulations (20 CFR 202.4) defines "control" as follows:

A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines "common control" as follows:

A company or person is under common control with a carrier, whenever the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

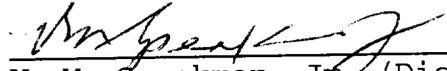
SRI clearly is not a carrier by rail. As mentioned above, the holding company, CAGY, has a 49 percent interest in SRI. The Board determines that a 49 interest is not by itself a controlling interest. Therefore, since there is no evidence that the owners of

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51 percent of SRI have any interest or relation to CAGY, its affiliates, or any railroads, a majority of the Board finds that SRI is not controlled by CAGY and consequently is not under common control with an employer under the Acts. Therefore, SRI is not a covered employer under the Acts.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting
opinion attached)

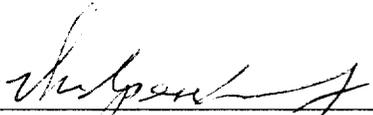


Jerome F. Kever

**DISSENT OF
V. M. SPEAKMAN, JR.
ON EMPLOYER STATUS DETERMINATION OF
SOUTHEASTERN RAIL, INC.**

Since CAGY Industries, Inc., owns 49% of the stock of Southeastern Rail, Inc., I feel it can be shown that this, in itself, constitutes common control with the other railroads the CAGY Industries, Inc., owns. Moreover, SRI receives a substantial percent of its revenue from its affiliated railroads.

Accordingly, SRI should be considered covered under the Acts and I dissent from the majority of the Board's decision to the contrary.



V. M. Speakman, Jr.

4/8/96

Date