

EMPLOYER STATUS DETERMINATION
Rail South, Inc.

DEC 19 1997

This is the determination of the Railroad Retirement Board regarding the status of Rail South, Inc. (RSI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

According to a letter dated July 23, 1997, from Wayne Sigley, President of RSI, RSI is a privately held corporation which repairs and refurbishes rail cars. In describing the operations of RSI, Mr. Sigley stated, "(W)e have repaired freight cars, assembled kit cars, repaired locomotives, fabricated component parts for cars, fabricated component parts for RR bridges, refurbished private cars, blast prime and painted cars." RSI began operations in December 1967¹, under Employer ID No. 59-1195312, and currently has 57 employees.

The RRA defines a covered "employer" in relevant part as:

* * * any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers * * * and which operates any equipment or facility or performs any service * * * in connection with the transportation of passengers or property by railroad * * * . [45 U.S.C. § 231(a)(1)(ii)].

A similar definition is provided at 45 U.S.C. § 351(a).

The Board's regulations provide that "control" exists when:

* * * 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. [20 C.F.R. § 202.4]

"Common control" exists when:

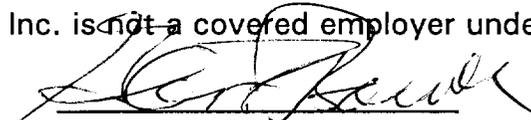
* * * the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled. [20 C.F.R. § 202.5]

¹ RSI was incorporated in 1967, under the name Southeastern Specialties, Inc. Its name was changed to Rail South, Inc. in September 1995. A coverage investigation on Southeastern Specialties was closed on February 9, 1995.

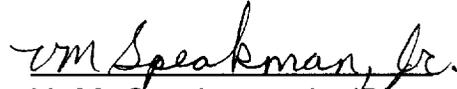
Rail South, Inc.

All RSI stock is owned by James B. and Juanita E. Sistare. Mr. Sistare is the Chief Executive Officer of RSI. No rail carrier has any ownership interest in RSI and no officer or director of RSI is "employed or involved in any way with a rail carrier". In view of these facts, the Board finds that there is no common control between RSI and any employer covered by the Acts.

Having found Rail South Inc. not to be under common control with a covered rail employer, the Board finds that Rail South Inc. is not a covered employer under the RRA and the RUIA.



Glen L. Bower



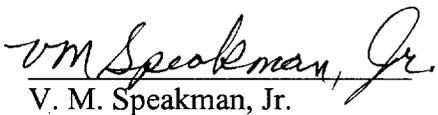
V. M. Speakman, Jr. (Dissenting)



Jerome F. Kever

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

I agree that Rail South, Inc., is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. However, I believe that further development is needed to determine whether the employees performing services for the railroads while on Rail South, Inc.'s, payroll should in fact be considered employees of the railroads themselves. It is my understanding that these employees may be replacements for those railroad workers who have been laid off. They are allegedly performing the same duties as the previously employed railroad employees on the premises of the railroads under the director of the railroad's supervisors. Accordingly, the status of these individuals should be open to investigation.


V. M. Speakman, Jr.

12-3-97
Date