EMPLOYER STATUS DETERMINATION
Samuels Pacific Industries, Inc.

JAN 1 9 2000

This is the determination of the Railroad Retirement Board concerning the status of Samuels Pacific Industries, Inc. (SPI), 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).

SPI was incorporated February 13, 1997, and is wholly owned by Richard Samuels. Mr. Samuels also owns the Oregon Pacific Railroad Company, an employer covered under the Acts as of January 1, 1997 (B.A. 2788).

In 1962, Mr. Samuels formed Samuels Steel Products, which performed heavy steel fabrication. In the mid-1980s Mr. Samuels created Hill Vista Investment Company, which dealt with the salvaging and scrapping of old locomotives and abandoned track. In 1991, Mr. Samuels purchased the East Portland Traction Company (B.A. 4646). In 1993, Hill Vista purchased Molalla Western Railway (B.A. 2771). On December 31, 1996, Molalla Western Railway and the East Portland Traction Company were dissolved. Oregon Pacific was then created to carry out all former railroad operations, and SPI was created to carry out railroad salvage, equipment maintenance and repair, locomotive rebuilding, and leasing.

SPI currently has seven employees who are also employees of Oregon Pacific. SPI performs service for Oregon Pacific and for various industrial companies, such as grain mills. SPI also performs service for Samtrak, an excursion railroad owned by Mr. Samuels. In 1998, 75 percent of SPI's revenues were attributable to its rail affiliate OPR, 14 percent to the lease of a locomotive to a private industrial company, and 9 percent to miscellaneous sources. In 1997, 58 percent of SPI's revenues were attributable to OPR, 35 percent to the lease and sale of locomotives to private industrial companies, and 5 percent to miscellaneous sources. In each year, 2 percent of SPI's revenues were attributable to services provided to Samtrak.

Section 1 of the RRA defines the term "employer" to include:

> (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

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> facility or performs any service (other than 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 RUIA (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).

SPI clearly is not a carrier by rail. This leaves open the question as to whether SPI is covered under the Acts by reason of its being under common control with an employer and its performing service in connection with transportation by railroad. Mr. Samuels is the sole owner of both SPI and Oregon Pacific, a covered employer. Accordingly, SPI is under common control with an employer under the Acts.

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. (20 CFR 202.7).

In Livingston Rebuild Center, Inc., v. Railroad Retirement Board, 970 F. 2d 295 (7th Cir. 1992), the Court of Appeals for the Seventh Circuit held a company whose business consisted of repairing locomotives and other rolling stock to be performing service in connection with railroad transportation in a fact situation where approximately 25 percent of its business came from its affiliate and where approximately 95 percent of its business came from the railroad industry. The type of service provided by SPI is vital to railroad transportation: a railroad cannot function without repair and maintenance of locomotives and other rail equipment. See Despatch Shops, Inc. v. Railroad Retirement Board, 153 F. 2d 644 (D.C. Cir. 1946); and Livingston Rebuild Center. In Railroad Retirement Board v. Duquesne Warehouse Co., 149 F.2d 507 (D.C. Cir. 1945), aff'd 326 U.S. 446, 90 L.Ed. 192, 66 S.Ct. 238 (1946), the Court of Appeals held that a warehouse corporation owned by a railroad and engaged in loading and unloading railroad cars and other handling of property transported by railroad, and in other activities which enabled the railroad to perform its rail transportation more successfully, was performing "services in connection with" the transportation of property by railroad and therefore was an employer under

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the Railroad Unemployment Insurance Act. The Court of Appeals quoted from the opinion of the Railroad Retirement Board which had held that Duquesne was an employer under the Act:

> In light of the general purpose of the * * * [Railroad Unemployment Insurance Act] and accepted doctrines of statutory construction, the Board has construed the carrier affiliate coverage provision as denoting services which are an integral part of, or are closely related to, the rail transportation system of a carrier and as including within its coverage (1) carrier affiliates engaged in activities which are themselves railroad transportation or which are rendered in connection with goods in the process of transportation, such as loading and unloading railroad cars, receipt, delivery, transfer in transit, and other handling of property transported by railroad; and also (2) carrier affiliates engaged in activities which enable a railroad to perform its rail transportation, such as maintenance and repair of way and equipment, and activities which enable a railroad to operate its rail system more successfully and to improve its services to the public such as auxiliary bus transportation, dining facilities, and incidental warehousing services.
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> We agree with the Board's construction of the Act. It follows the ordinary meaning of the words used in the statute. It achieves a common sense result well within what we conceive to be the policy of Congress, i.e., to cover the business of railroading as it is actually carried on. (Footnote omitted.) 149 F.2d at 509.

SPI is under common control with a rail carrier employer, Oregon Pacific. It leases rail equipment, performs maintenance and repair of rail equipment, and rebuilds locomotives. The majority of the revenue of SPI is generated by services it provides for its affiliated carrier.

Accordingly, it is determined that SPI is 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

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the corresponding provision of the Railroad Unemployment Insurance Act as of February 13, 1997, the date of its incorporation. SPI should be considered a new employer for purposes of experience rating under the RUIA.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever