B.C.D. 00-11

Employer Status Determination
Penn Virginia Corporation

MAY 08 2000

This is the decision of the Railroad Retirement Board regarding the status of Penn Virginia Corporation as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Penn Virginia is a publicly held company. As of March 5, 1999, it had 847 shareholders which held 8,369,289 shares of common stock. Penn Virginia is engaged in the exploration, development, and production of oil and natural gas, and the collection of royalties and overriding royalty interests on various oil and gas properties, and the leasing of coal mineral rights and the collection of related royalties. Penn Virginia holds 3,307,200 shares in Norfolk Southern Corporation, an employer under the Acts (B.A. No. 9408). Penn Virginia also owns Kanawha Rail Corporation. Kanawha filed a notice of exemption with the Surface Transportation Board in connection with its acquisition from Winifrede Railroad Company of 6.47 miles of rail trackage in West Virginia, together with associated rail properties (STB Finance Docket No. 33783, July 23, 1999). Penn Virginia also indirectly owns the Powell River Railroad Company. The employer status of both Kanawha and Powell River are currently being investigated for submission to the Board.

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 (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).

Penn Virginia Corporation

Penn Virginia clearly is not a carrier by rail. In addition, there is no evidence that it provides any services in connection with rail transportation. Further, in Union Pacific Corporation v. United States, 5 F.3d 523 (Fed Cir. 1993), the United States Court of Appeals for the Federal Circuit held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of § 3231 of that Act. The relevant facts of the Union Pacific case are indistinguishable from those presented by Penn Virginia. Accordingly, a majority of the Board, Labor Member dissenting, determines that Penn Virginia is not under common control with its subsidiaries. Because Penn Virginia does not have any of the characteristics of an "employer", under any of the definitions of that term in the Railroad Retirement and Railroad Unemployment Insurance Acts, the Board finds that Penn Virginia is not an employer under those Acts.

Cherryl T. Thomas

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V. M. Speakman, Jr.

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

Jerome F. Kever

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Opinion of
V. M. Speakman, Jr.
On Employer Status Determination of
Penn Virginia Corporation

I agree that Penn Virginia Corporation is not a carrier by rail and that there is no evidence that it provides any services in connection with rail transportation. I disagree with the majority of the Board's determination and that of the United States Court of Appeals that a parent corporation, which owns a rail carrier subsidiary is not under common control with the subsidiary.

However, because Penn Virginia Corporation is not a carrier by rail and is not providing services in connection with rail transportation, I agree that it is not an employer.

VM Speakman Jr.
V. M. Speakman, Jr.

4-26-00
Date