B.C.D. 00-17

Employer Status Determination
Union Pacific Technologies
Decision on Reconsideration

MAY 16 2000

This is the decision on reconsideration of the Railroad Retirement Board regarding the status of Union Pacific Technologies (UPT) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. UPT was determined in Legal Opinion L-88-65 to be an employer under the Acts, with service creditable from May 1987. In B.C.D. No. 97-72, the Board determined that UPT ceased to be an employer effective September 30, 1996, due to its merger into Union Pacific Corporation on that date. UPT has requested reconsideration of the date its coverage terminated. More specifically, UPT asked that its coverage be terminated December 31, 1991, and submitted, in connection with its request for reconsideration, additional facts regarding the period January 1, 1992 to September 30, 1996.

As recounted in prior determinations, UPT began operations on May 28, 1987, as the wholly owned subsidiary of the Union Pacific Corporation. The Union Pacific Corporation is also the parent company of the Union Pacific Railroad. At the time of formation, UPT was an electronic data processing firm which derived a significant portion of its business from the railroad. Accordingly, UPT was determined to be a covered employer under the Acts effective May 1987, as a company under common control with a rail carrier which performed service in connection with railroad transportation. See Legal Opinion L-88-65.

In December 1991, Union Pacific Technologies Transportation Systems, Inc. was created as the subsidiary of UPT. Effective January 1, 1992, responsibilities for electronic data processing for the Railroad, and the employees engaged in performance of that service, were transferred to Union Pacific Technologies Transportation Systems. Union Pacific Technologies Transportation Systems was determined to be a covered employer under the Acts effective January 1992, as a company under common control with a rail carrier which performed service in connection with railroad transportation. See Board Coverage Decision 97-63.

A small core of employees remained with UPT after December 1991 to perform administrative services for Union Pacific Technologies Transportation Systems and for another subsidiary company not engaged in service for the railroad industry. However, after 1991, revenues earned by UPT for services dropped from over $26 million to an average of $27,750 per year over the period 1992 through 1995. As noted above, UPT merged into its parent company, Union Pacific Corporation, effective September 30, 1996.

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

UPT was clearly not a carrier by rail. However, as a subsidiary of the Union Pacific Corporation, which also owns the Union Pacific Railroad, UPT throughout its existence was under common control with a rail carrier within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act. The question thus remains as to whether the administrative services performed by the remaining staff of UPT during the period January 1992 through September 1996 constituted a service in connection with railroad transportation within the meaning of the statutes.

The Board considered a similar situation in CSX Technology, Inc., Board Coverage Decision 97-31. In that case, as with UPT, the subject company was itself a subsidiary of a holding company which also owned a rail carrier subsidiary. CSX Technology in turn provided administrative services to its own subsidiary data processing companies. The Board concluded in that case, Labor Member dissenting, that, as no services were provided by CSX Technology directly to its sister railroad subsidiary, the administrative services to the data processing companies did not constitute services in connection with railroad transportation under the Acts. Accordingly, based on the reasoning in CSX Technology, a majority of the Board, Labor Member dissenting, finds that effective with the transfer of rail-related data processing to Union Pacific Technologies Transportation Systems, UPT lost the characteristics essential to its status as an

employer under the Acts. See regulations of the Board at 20 CFR 202.11. A majority of the Board, Labor Member dissenting, finds that UPT ceased to be an employer under the RRA and RUIA effective with the close of business on December 31, 1991. The request for reconsideration is granted.

Cherryl T. Thomas

V. M. Speakman, Jr. (dissenting)

Jerome F. Kever