B.C.D. 00-20

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Employer Status Determination
Employee Service Determination
Ryder Integrated Logistics, Inc.

This is the decision of the Railroad Retirement Board regarding the status of Ryder Integrated Logistics, Inc. (Ryder) 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) and regarding the status of Ryder employees under those Acts.

Under a contract with Union Pacific, Customized Transportation, Inc. (CTI), a subsidiary of CSX Corporation, has been transporting diesel fuel to and refueling Union Pacific locomotives for the last three years. Since January 1, 1998, CTI has also had a refueling contract with CSXT. Ryder serves as the refueling operator for CSXT (and not for Union Pacific) under a subcontract with CTI. A determination regarding the status of CTI under the Railroad Retirement and Railroad Unemployment Insurance Acts is currently pending. Ryder provides the drivers, tractors, and certification necessary to perform the obligations under the contract. Ryder is a subsidiary of Ryder System, Inc., a logistics company. Formerly, O/O Truck Sales, Inc., an affiliate of CSXT and an employer under the Acts, performed the refueling service for CSXT (under a contract between CSXT and the parent of O/O Truck Sales, CSX Intermodal, Inc.). O/O Truck Sales was dissolved into CSX Intermodal on December 11, 1996.[1] In 1995 CSX Intermodal contracted with Ryder for refueling services for CSXT. On January 1, 1998, the service agreement was assigned to CTI.

After November 1995, over half of the O/O Truck Sales employees obtained employment with Ryder. A check of 1996 social security earnings records indicates that of 201 O/O Trucking employees, 103 had earnings from Ryder.

Ryder uses 57 tankers owned by CTI, 4 supertankers and 7 locomotive service trucks (LSTs) owned by CSXT, and tractors owned by Ryder. The LSTs are trailers that carry traction sand, water, and oil to service the locomotives. They have the capacity to unload toilets and suck out used oil from locomotives. LSTs are dispatched to various locations with a chase truck carrying 2 CSXT employees, a mechanic and a service attendant to service the locomotives. The

[1] Board Coverage Decision (BCD) number 96-82 held CSX Intermodal not to be an employer.

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Ryder driver is prohibited by work procedures contained in the Ryder Employee Handbook from boarding the locomotive. The driver does not perform Federal Railway Administration-required services. The CSXT employees do not board or drive the LST. The driver fuels the locomotive, and extends the watering hose or sand hand for the CSXT crew to use. The LST driver does not check the oil, empty toilets, or work on the locomotive. The LST driver is required to notify the CSXT yardmaster before starting a task, when the task is completed, and when the driver is preparing to move the unit to another location. The Handbook also provides that the driver "will receive instructions from" the yardmaster.

Ryder employees are given work assignments and scheduling from Ryder supervisors. Daily dispatch of locomotives is provided by communication from CSXT employees to Ryder supervisors. Ryder employees are not supervised by CSXT employees. CSXT does not provide insurance coverage for Ryder employees. After a Ryder employee has fueled a CSXT locomotive, he fills out an employee time sheet, activity shift report, meter tickets, a bill of lading, weekly service summary, and a LST report. These documents are provided to Ryder supervisors; the last two are then shared with CSXT. The Ryder Operations Manual provides that every fuel truck will receive instructions from yardmasters. Ryder supervisors and CSXT machinists instruct Ryder drivers on the road. The Power Desk is an operation of CSXT and is responsible for knowing the location of CSXT trains, their destinations, and the amount of fuel they have and the amount they need. The Power Desk decides what engines are to be fueled and where. Yardmasters communicate directly or indirectly with the Power Desk. The Power Desk organizes the line up that will determine what the LST operators will do. The LST operator starts his day by either contacting the trainmaster or yardmaster directly to obtain the schedule or receives it from the driver he is relieving. The Central Dispatching Center, a part of CSXT, processes reports from Ryder drivers. The data from these reports is processed and transmitted to the Power Desk. All training for Ryder employees is provided by Ryder.

Ryder's web site states that the company designs, operates, and manages custom-tailored logistics[2] systems for companies such as Whirlpool, Xerox, Target Stores, the Saturn and Cadillac divisions of General Motors, Hewlett

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[2] Ryder's web site defines "logistics" as "the process of getting the right products to the right place at the right time in the right condition."

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Packard, Bell South, and Ford Motor Company. It operates in the United States, Canada, the United Kingdom, Germany, Poland, Mexico, the Netherlands, Brazil, and Argentina. Revenue in the twelve months ending June 30, 1999, was $5.4 billion. Assets as of that date were $6.2 billion.

Section 1(a)(1) of the Railroad Retirement Act [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;
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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 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 * * * [45 U.S.C. §231(a)(1)(i) and (ii)].

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 (RRTA) (26 U.S.C. §3231).

Ryder is clearly not a carrier by rail. Further, there is no evidence that Ryder is under common ownership with any rail carrier or controlled by officers or directors who control a railroad. Ryder therefore is not a covered rail carrier affiliate employer. As Ryder meets no other definition of a covered employer under the Acts, the Board finds that Ryder is not a covered employer.

This conclusion leaves open, however, the question of whether the individuals who performed work for Ryder under its arrangements with CSXT should be considered to be employees of the railroad rather than of Ryder. Section 1(b) of the Railroad Retirement Act and section 1(d)(i) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of

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an employer for compensation. Section 1(d) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
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> (ii) he renders such service for compensation * * *.

Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. §§ 3231(b) and (d)). Paragraph (A) of the definition dates from the inception of the railroad retirement system. See Public Law No. 162, 75th Cong., Ch. 382, Part I, (50 Stat. 307). A majority of the Board finds that the evidence indicates that employees of Ryder who performed services under the contract between CTI and Ryder are not "subject to the continuing authority of the employer to supervise and direct the manner of rendition of [their] service" as specified in paragraph (A). The only evidence to the contrary is the statement in the Ryder Employee Handbook that drivers will receive instructions from yardmasters. It is the view of a majority of the Board that this language does not mean that the yardmasters have "continuing authority * * * to supervise and direct the manner of rendition of" service of the drivers but that the yardmasters are in charge of the CSXT property where the refueling takes place. Accordingly, a majority of the Board finds that the individuals performing services under the contract do not meet the definition contained in subparagraph (A), above.

The tests set forth under paragraphs (B) and (C) go beyond the test contained in paragraph (A) and would hold an individual to be a covered employee if he is integrated into the railroad's operations even though the control test in paragraph (A) is not met. However, under an Eighth Circuit decision consistently followed by the Board, these tests do not apply to employees of independent contractors performing services for a railroad where such contractors are engaged in an independent trade or business. See Kelm v.

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Chicago, St. Paul, Minneapolis and Omaha Railway Company, 206 F. 2d 831 (8th Cir. 1953). Ryder is a multi-billion dollar company which provides services for a wide variety of companies other than CSXT. It is indisputably engaged in an independent trade or business.

Accordingly, it is the decision of a majority of the Board that the services performed by employees of Ryder for CSXT are not creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Cherryl T. Thomas

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

Jerome F. Kever

DISSENT OF
V. M. SPEAKMAN, JR.
ON
EMPLOYER STATUS DETERMINATION
RYDER INTEGRATED LOGISTICS, INC.

It is my position that employees working as "contractors" for Ryder are in fact under the direction and supervision of CSX Transportation (CSXT) rather than Ryder, especially when performing service at the location of the railroad. Employees performing work under the contract rely on a significant amount of equipment, resources and supervision by CSXT in the performance of their duties. As stated in the majority's determination, Ryder uses 57 tankers owned by CTI and 4 supertankers and 7 locomotive service trucks (LST's) owned by CSXT. Those individuals driving the LST's are required to report to the CSXT yardmaster before starting their tasks, and must receive their schedules and instruction from the trainmaster or yardmaster.

One employee stated during the course of the Railroad Retirement Board's audit that he seldom sees a Ryder representative and has daily contact with the CSXT yardmasters and trainmasters. Those individuals give him the orders on where to go and what to do. Safety training is performed by CSXT. Travel expenses are apparently paid by Ryder, but employees say that they believe it is later billed to CTI.

I dissent from the majority of the Board's determination and would find the individuals in question to be under the continuing authority of CSXT, thus covered under the Acts.

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

5-25-00
Date