

**EMPLOYER STATUS DETERMINATION****Valley Railroad Company d/b/a Essex Steam Train & Riverboat**

This is a determination of the Railroad Retirement Board concerning the status of Valley Railroad Company d/b/a Essex Steam Train & Riverboat (VRC) 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). The status of VRC under the Acts has not previously been considered.<sup>1</sup>

VRC is a private stock company with approximately 30 stockholders that began operations in July of 1972. Robert C. Bell, the president of the company, provided all pertinent information to the Railroad Retirement Board (the Board) necessary to make a status determination for VRC. VRC operates on a 12.5 mile right of way leased from the State of Connecticut. VRC has 13 employees and operates as a seasonal tourist line that carries about 100,000 tourist passengers but no freight each year. VRC also operates a riverboat that can be boarded near Haddam, CT for a sightseeing tour of the Connecticut River. The right of way that the VRC uses does not cross any state line and operates entirely on Connecticut state property.

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, United States Code;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

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<sup>1</sup> In Legal Opinion L-53-365, issued on August 27, 1953, the Valley Railroad Company (Pennsylvania) was determined to no longer be a railroad employer covered under the Acts as of April 1, 1953. After a search of the Employer Coverage Files located within the Office of the General Counsel, it has been determined that the present Valley Railroad Company, that shared the same name with the former Pennsylvania company, is not the same railroad and has nothing to do with any of the former railroad's operations.

Title 49 of the United States Code, subtitle IV under Part A states the jurisdiction of the Surface Transportation Board. Specifically, Section 10501 states:

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

- (A) only by railroad; or
- (B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

- (A) a State and a place in the same or another State as part of the interstate rail network;
- (B) a State and a place in a territory or possession of the United States;
- (C) a territory or possession of the United States and a place in another such territory or possession;
- (D) a territory or possession of the United States and another place in the same territory or possession;
- (E) the United States and another place in the United States through a foreign country; or
- (F) the United States and a place in a foreign country.

The evidence of record establishes that VRC is a carrier by rail, since it does operate a passenger railroad. However, VRC does not transport passengers from a place in one state to a place in another state. VRC strictly provides excursion service between two points entirely within one state. VRC does not interchange with any other railroad and does not haul any freight onto any other rail carrier. VRC's operation of its tourist excursion steam railroad and riverboat is not, therefore, subject to the jurisdiction of the Surface Transportation Board (STB).

Accordingly, it is determined that because Valley Railroad Company d/b/a Essex Steam Train & Riverboat is not a carrier by rail which is subject to STB jurisdiction, it is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever