

EMPLOYER STATUS DETERMINATION**CSX Intermodal, Inc.****CSX Intermodal Terminals, Inc.****CSX Services****Transportation Distribution Services, Inc.**

This is the determination of the Railroad Retirement Board concerning the status 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) of the following four entities: (1) CSX Intermodal, Inc. (Intermodal); (2) CSX Intermodal Terminals, Inc. (Terminals); (3) CSX Services (Services); and (4) Transportation Distribution Services, Inc. (TDSI). Each of these has previously been held not to be an employer covered by the Acts.¹

CSX Corporation, through its attorney, Thomas P. Gies, has requested the Board to consider whether the status of these companies has changed as a result of a corporate reorganization that occurred on June 26, 2010. Having reviewed the information provided by Attorney Gies, we find, for the reasons explained in the following discussion, that the employees of Intermodal became employees of a covered employer and that each of the other three entities became an affiliate employer under the RRA and the RUIA on the date of the corporate reorganization.

Background

CSX Corporation (CSX) is the corporate parent of CSX Transportation, Inc. (CSXT). CSXT is a covered rail carrier employer under the RRA and RUIA with service creditable from January 1, 1983. It is one of seven Class I freight railroads in the United States. CSX is publically owned; its shares are traded on the New York Stock Exchange.

In 1996, after a full evidentiary hearing, a majority of the Board found that Intermodal did not perform a service in connection with railroad transportation and held that Intermodal was properly classified as an employer under the Federal Insurance Contributions Act (FICA) and was not an employer under the Acts administered by the Board (B.C.D. No. 96-82). That same decision held that Services was not an employer under the RRA and RUIA.

¹ B.C.D. No. 96-82 (CSX Intermodal, Inc. and CSX Services); B.C.D. No. 97-48 (CSX Intermodal Terminals, Inc.); B.C.D. No. 99-38 (Transportation Distribution Services, Inc.).

Based on the same record developed in the Intermodal case, a majority of the Board held in B.C.D. No. 97-48 that Terminals, which had been a covered employer from January 1, 1988, ceased to be covered effective December 31, 1993.² Finally, in B.C.D. 99-38, a majority of the Board found that the services provided by TDSI fell within the trucking service exception and did not constitute service in connection with railroad transportation.³

On June 26, 2010, CSX underwent a corporate reorganization. Intermodal merged into CSX Transportation, thereby ceasing to exist as a separate legal entity. Many of its 300 employees were transferred to the Sales and Marketing Department of CSXT. Mr. William Clement, who had recently been promoted to the position of president of Intermodal, now reports to Mr. Clarence Gooden, Executive Vice President of Sales and Marketing and Chief Commercial Officer of CSXT.

As part of the reorganization, Services became a direct subsidiary of CSXT. The approximately 30 employees of Services became part of CSXT's customer services group, since the operations of Services were combined into those of CSXT.

In addition, Terminals, which prior to the reorganization was a wholly-owned subsidiary of Intermodal, became a first tier subsidiary of CSX. CSXT is now the sole customer of Terminals' operations.

TDSI remains a first tier subsidiary of CSX, but it is more closely integrated into the Automotive Department of CSXT. Mr. Jack Cumming, the leader of TDSI, now reports to Mr. Gooden.

Relevant Law and Regulations

Section 1 of the RRA defines an 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;

(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

² The name of the company at that time was CSX Sealand Terminals Inc.

³ The name of the company at the time of the coverage decision was Total Distribution Services, Incorporated.

(except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.” 45 U.S.C. § 231(a)(1)(i) and (ii).

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

Section 202.4 of the Board’s regulations provides as follows:

“A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.” 20 CFR 202.4

Section 202.5 of the Board’s regulations provides that:

“A company or person is under common control with a carrier, whenever the control (as the term is used in §202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.” 20 CFR 202.5.

Section 202.7 of the Board’s regulations provides that:

“The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance or 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.

Discussion and Conclusion

As noted earlier in this decision, on June 26, 2010, CSX Intermodal, Inc. merged into CSX Transportation, Inc. Since CSXT is a rail carrier employer under the RRA and the RUIA, those employees of Intermodal who were transferred to the Sales and Marketing Department of CSXT are now covered by the Acts.

Prior to the reorganization, CSX Intermodal Terminals, Inc. was a wholly-owned subsidiary of Intermodal. Terminals became a first tier subsidiary of CSX when Intermodal merged into CSXT. Because Terminals is now owned by the same company that owns CSXT, we find that Terminals is under common control with a rail carrier employer. As a part of the reorganization, CSXT is now the sole customer of Terminals' operations. We therefore find that Terminals provides service in connection with railroad transportation. We hold that Terminals became an employer under the RRA and the RUIA effective June 26, 2010.

CSX Services became a direct subsidiary of CSXT as part of the reorganization. Services' employees became a part of CSXT's customer services group. Thus, for purposes of the affiliate definition of an employer under the RRA and the RUIA, Services is now owned by a rail carrier employer. Further, because Services is now part of CSXT's customer services group, we find that Services provides service in connection with railroad transportation. CSX Services became an employer under the RRA and the RUIA effective June 26, 2010, the date of the reorganization.

Similarly, we find that TDSI became an employer under the Acts on the date of the corporate reorganization. As a first tier subsidiary of CSX, TDSI is under common control with CSXT. Because TDSI is now more closely integrated into the Automotive Department of CSXT, we find that TDSI provides service in connection with railroad transportation within the definition of an employer under the RRA and the RUIA.

Summary of Holdings

For the reasons explained above, we hold that effective June 26, 2010:

1. Employees of CSX Intermodal, Inc. became covered employees of a rail carrier employer, CSXT, upon the merger of Intermodal into CSXT.
2. CSX Intermodal Terminals, Inc., CSX Services, and Transportation Distribution Services, Inc. became employers under section 1(a)(1)(ii) of the Railroad Retirement Act and section 1(a) of the Railroad Unemployment Insurance Act.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever