

EMPLOYER STATUS DETERMINATION
Rocky Mountain Railcar & Repair, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Rocky Mountain Railcar & Repair, Inc. (RMRC), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information about RMRC was initially provided to the agency by Ms. Kerstin Topham, Controller of RMRC. In response to questions about RMRC, Ms. Topham stated that RMRC is wholly owned and privately held by Roger and Maureen Peterson and no railroad has a financial interest in RMRC either through direct or indirect stock ownership, as a parent corporation or indirect stock ownership through a parent company. They do not have a controlling interest in a rail carrier. Roger Peterson is the Chief Executive Officer and he is not an officer of a rail carrier.

RMRC began operations on February 1, 2007 and has 20 employees. RMRC is in the business of repairing and cleaning railcars. RMRC leases facilities and equipment from a sister company, Utah Fabrication, a steel fabrication company. They own 5 finger tracks and are in the process of installing a 11,000 foot loop track to connect the classification yard directly to the facility. One hundred percent of RMRC's business and revenues come from rail carriers.

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

2(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).

The evidence of record establishes that the Federal Railroad Administration does not require RMRC to pay user fees. In addition, the Surface Transportation Board has not made any ruling regarding the status of RMRC. Finally, the Internal Revenue Service has not ruled on the applicability of the Railroad Retirement Tax Act to RMRC. There is no evidence that RMRC is operating as a rail carrier in interstate commerce subject to the jurisdiction of the Surface Transportation Board. It is therefore not an employer as defined under 45 U.S.C. § 231(a)(1)(i).

In addition, the evidence shows that RMRC is wholly owned and privately held by two individuals, Roger & Maureen Peterson. No other rail carrier owns, operates or has an interest in RMRC and no RMRC officer is an officer of a rail carrier. As a result, it is not under common control with nor is it owned or controlled by a rail carrier. It is therefore not a employer as defined under 45 U.S.C. § 231(a)(1)(ii). Based on the evidence submitted, we hold that Rocky Mountain Railcar & Repair, Inc. 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