

B.C.D. 12-1
EMPLOYER STATUS DETERMINATION
Four Rivers Finance Company, Inc.

December 15, 2011

This is the determination of the Railroad Retirement Board concerning the status of Four Rivers Finance Company, Inc. (FRFC) 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 regarding FRFC was submitted by Mr. Anthony V. Reck, President and Chief Executive Officer of Paducah & Louisville Railway, Inc. (P&L). According to Mr. Reck, FRFC, a Delaware corporation, is a wholly owned subsidiary of Four Rivers Transportation, Inc. (FRT), a non-covered entity. In addition to FRFC, FRT also owns the P&L, Evansville Western Railway, Inc. (EVWR), and Appalachian and Ohio Railroad, Inc. (A&O), all rail carrier employers covered by the Acts. FRFC began operations of October 30, 2003, and first compensated its two employees that date.

Mr. Reck explained that there are two common directors between FRFC and its affiliated railroads. Mr. Reck is a director of FRFC as well as an officer and director of P&L, EVWR and A&O. Mr. Andrew Glassman is a director of FRFC and P&L. Mr. Thomas A. Greene is an officer of P&L, and officer and director for EVWR, and the Vice President and Treasurer of FRFC. According to Mr. Reck, FRFC's two employees both provide administrative services, including handling bank accounts, preparation and documentation of Board of Director meetings, accounting services, and centralized loan administrative services. None of the services provided by the two employees "relate to the actual operation of the railroads" but are:

Primarily financial in nature relating to loan administration and cash management for the affiliate companies.

Mr. Reck describes FRFC operations as providing "centralized loan administration and cash management services to its affiliates P&L, EVRW and A&O * * * These include loans made from internal funding sources". According to Mr. Reck, FRFC spends "over 95%" of its total business time doing business with its rail carrier affiliates, and "over 95%" of FRFC's total revenue is received from its rail carrier affiliates.

Mr. Reck reported that FRFC does not own any railroad equipment or assets and does not jointly control railroad equipment and facilities with another entity. FRFC is not a party to written agreements with rail carriers and is not a lessee or lessor of railroad track or equipment.

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;

(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 shows that FRFC is clearly not a rail carrier employer under the definition of employer in subparagraph (i) quoted above.

This conclusion, however, leaves open the question as to whether FRFC can be considered an employer under the definition in subparagraph (ii). Under section 1(a)(1)(ii), a company is an employer if it meets both of two criteria: if it is owned by or under common control with a rail carrier employer and if it provides "service in connection with" railroad transportation. If it fails to meet either condition, it is not a covered employer within section 1(a)(1)(ii). In considering questions of coverage within the meaning of section 1(a)(1)(ii), courts have generally looked to the type of service being provided, the amount of work being performed for the railroad affiliate, and the amount of work being performed for the railroad industry.

The evidence of record shows that FRFC is under common control with a rail carrier employer. As described previously, FRFC is owned by FRT which also owns several carriers including P&L, EVWR and the A&O, all carriers covered under the Acts. FRFC being under common ownership with these covered affiliates satisfies one part of the two part test for affiliated coverage.

The question still remains whether FRFC performs a "service in connection with" railroad transportation. Section 202.7 of the Board's regulations (20 CFR 202.7) defines service in connection with railroad transportation as follows:

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 of 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.

As stated previously, Mr. Reck described the services provided by FRFC to be “centralized loan administration and cash management services to its affiliates P&L, EVRW and A&O”, further described as administrative services, including handling bank accounts, preparation and documentation of Board of Director meetings, accounting services, and centralized loan administrative services. Over 95% of these services are provided to FRFC’s rail carrier affiliates P&L, EVWR, and A&O.

The Court of Appeals for the Eighth Circuit found operation of an office building which housed administrative offices of the rail carrier to be “a service connected with and supportive of railroad transportation.” Southern Development Co. v. Railroad Retirement Board, 243 F. 2d 351, (8th Cir., 1957) at 355. If such an indirect activity as maintaining space for office employees constitutes a service with the meaning of the Acts, the Board is then convinced that the actual activities of those office employees, such as the centralized loan administration and cash management services further described as administrative services, including handling bank accounts, preparation and documentation of Board of Director meetings, accounting services, and centralized loan administrative services must be services in connection with the rail transportation of FRFC’s rail carrier affiliates as well. See B.C.D. 03-76, *Canadian National Railway Properties, Inc.* (affiliate company which acquired, managed and disposed of real estate and personal property performed a service in connection with the railroad transportation conducted by the associated rail carrier.)

The evidence of record establishes that FRFC does not conduct rail carrier operations itself. FRFC has, however, been involved in the management of short line railroads since 2003. Accordingly, the Board finds that FRFC has been performing services in connection with the transportation of passengers or property by railroad. The Board holds that FRFC became an affiliate employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective October 30, 2003, when it began operations and first compensated employees.

Original signed by:

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