

EMPLOYER STATUS DETERMINATION

Minnesota River Bridge Company

This is the determination of the Railroad Retirement Board concerning the status of Minnesota River Bridge Company (MRBC) 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 MRBC was provided by Kent P. Shoemaker, Chairman of the Board of Directors and Chief Executive Officer of MRBC, and Charles H. Clay of Head, Seifert & Vander Weide, counsel for MRBC, and is also from Surface Transportation Board Decision and Notice of Exemption, Finance Docket 32810. MRBC was incorporated October 13, 1995, and acquired 1.11 miles of track, including a railroad bridge, from the Soo Line Railroad Company on April 30, 1996. On April 30, 1996, MRBC entered into an agreement with Twin Cities & Western Railroad Company, a covered employer under the Acts (BA No. 3664), to permit Twin Cities to operate over the line. MRBC retains a residual obligation to provide common carrier rail freight service. Twin Cities operated the first train over the MRBC track on August 20, 1996.

The stockholders of MRBC also own all of the stock of Twin Cities and of Red River Valley & Western Railroad Company, a covered employer under the Acts (BA No. 3657).

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(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 (other than 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).

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In cases such as this, where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC or STB certified carrier to determine the status of the certified carrier under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC or STB as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC or STB as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

MRBC has no employees and operations over the line are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to operate MRBC's rail line to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that MRBC is not a carrier under section 1(a)(1) of the Railroad Retirement Act or sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act.

We must turn next to section 1(a)(1)(ii) of the Act to determine whether MRBC is a covered employer under that section. MRBC is under common ownership with Twin Cities, an employer under the Acts. Therefore, MRBC is under common control with a rail carrier. Thus, if MRBC performs service in connection with rail transportation, it would be a covered employer. Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

* * * 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. [20 CFR 202.7]

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MRBC owns a railroad bridge, track, and appurtenances which are clearly integral to the operation of its affiliate railroad. However, since MRBC has no employees and the bridge itself is maintained by Twin Cities, a majority of the Board, finds that MRBC is not operating a facility or providing a service in connection with railroad transportation.

Accordingly, a majority of the Board concludes that MRBC is not an employer under the Acts.

Glen L. Bower _____

V. M. Speakman, Jr. (dissenting)

Jerome F. Kever _____