

## **EMPLOYER STATUS DETERMINATION**

### **Santa Cruz, Big Trees & Pacific Railway Company**

This is the determination of the Railroad Retirement Board on reconsideration of the status of Santa Cruz, Big Trees & Pacific Railway Company (SCBT) 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).

In Notice No. 92-55, issued on March 17, 1992, it was determined that SCBT became a rail carrier employer effective August 17, 1990, the date on which it began to interchange freight traffic with an interstate rail carrier. SCBT has requested reconsideration of that determination and has requested that segregation be applied so that only the freight portion of its operations would be covered by the Acts.

SCBT began operating limited recreational trains on October 11, 1985, on two miles of isolated trackage in the mountains at Felton, California, heading south toward Santa Cruz. The run was extended to the Santa Cruz city limits early in 1986, then to the junction yard and former Southern Pacific depot in September 1986, and finally to the Santa Cruz Beach Boardwalk on April 11, 1987 at the start of the new season.

In May 1985, SCBT obtained authority from the Interstate Commerce Commission (ICC) to acquire and operate a nine-mile line of railroad between MP 120.96 in the city of Santa Cruz, California and MP 129.72 in Felton, California. However, SCBT did not begin to interchange freight (with the Southern Pacific Transportation Company (BA No.1713) until August 17, 1990.

According to Georgiana P. Clark, Chief Executive Officer of SCBT, freight service is and has been irregular and sporadic. In 1990, SCBT carried a total of five cars. In 1991, SCBT received a total of 65 cars and in 1992, 64 cars. Ms. Clark stated that income relating to freight for 1991 and 1992 was approximately 3% of SCBT's total income for each year. Freight income in 1990 was \$750; in 1991, \$9,750; and in 1992, \$9,600. Ms. Clark did not foresee any increase in freight haul in 1993 and stated that as of April 13, 1993, a total of six cars had been moved, with revenue of \$762.

Ms. Clark stated that two full-time employees spend an average of 7.3% of their time on freight haul and that they spend the remainder of their time on passenger service. Ms. Clark indicated that those two employees work an average of 152 hours per man, per year, on freight haul.

Section 1(a)(1) of the RRA provides in pertinent part that the term

"employer" shall include:

**Santa Cruz, Big Trees & Pacific Railway Company**

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49 [the Interstate Commerce Act].

Section 1 of the RUIA contains the same definition.

A company which operates within one state a tourist or excursion railroad solely for recreational and amusement purposes and which is not subject to Part I of the Interstate Commerce Act is not an employer under the RRA and the RUIA. Thus, the initial determination concerning the employer status of SCBT held that it did not become an employer under the RRA and the RUIA prior to August 17, 1990, the date on which it began to operate freight service subject to ICC jurisdiction.

It is apparent from the information subsequently provided by Ms. Clark that the freight service provided by SCBT is only a minor part of its operation and that its primary business continues to be the operation of an excursion railroad. Under section 202.3 of the Board's regulations, where a company is principally engaged in business other than carrier business, but also engages in some carrier business, the Board may find that only that segment of the business which performs the carrier service should be considered to be an employer under the RRA and the RUIA. Section 202.3 provides that such determination will be made in light of factors such as the following:

- (1) The primary purpose of the company or person on and since the date it was established;
- (2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
- (3) The amount of its carrier business and the ratio of such business to its entire business;
- (4) Whether its carrier business is a separate and distinct enterprise. (20 CFR §202.3).

The Board finds that this is a proper case for the concept of segregation, as provided for by section 202.3 of the Board's regulations, to be applied. The primary purpose of SCBT, from the time that it began operations in October 1985, has been the operation of a recreational/tourist railroad. SCBT did not begin to operate freight service until almost 5 years later. Its freight service is and has been irregular and sporadic and constitutes a very small percentage of SCBT's total business. SCBT's income relating to freight service was approximately 3% of its total income for 1991 and 1992. Only two of SCBT's full-time employees

spend approximately 7.3% of their time doing freight work. In addition, SCBT's freight activity from August 1990 through April 13, 1993 has consisted of handling less than 150 cars. It is evident from the detailed information provided by Ms. Clark in

**Santa Cruz, Big Trees & Pacific Railway Company**

connection with SCBT's request for reconsideration that SCBT's freight business is separate and distinct from its tourist railroad.

The Board therefore finds that only the freight portion of SCBT's operation has been an employer under the RRA and the RUIA since August 17, 1990.

---

Glen L. Bower

---

V.M. Speakman, Jr.

---

Jerome F. Kever

MPDadabo:mpd  
SANT1134.mpd