

EMPLOYER STATUS DETERMINATION
Coe Sun, Inc., d/b/a Tarantula Steam Train

FEB 03 2000

This is the determination of the Railroad Retirement Board concerning the status of Coe Sun, Inc., d/b/a Tarantula Steam Train, 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 Tarantula Steam Train was provided by Laurence I. Coe, President and Chairman of Coe Sun, and by Sondra Y. Nations, Administrator, Fort Worth & Western Railroad, an employer under the Acts (B.A. No. 2861). Tarantula Steam Train operates a steam locomotive and six coaches over approximately 21 miles of rail line within the state of Texas.

Coe Sun is a privately-held corporation owned by Mr. Coe, who is also the President and Chairman of Coe Rail, Inc., an employer under the Acts (B.A. No. 3266) located in the state of Michigan.

Tarantula Steam Train was formerly operated by the Tarantula Mercantile Corporation, which leased the equipment and obtained a crew from the Fort Worth & Western Railroad. The Tarantula Mercantile Corporation and the Fort Worth & Western Railroad are subsidiaries of Tarantula Corporation. On April 10, 1999, Tarantula Corporation entered into an agreement with Coe Sun under the terms of which Coe Sun is to operate the Tarantula Steam Train. The rail equipment and right to operate over the rail line is provided by Tarantula Corporation.

Section 1(a)(1) of the Railroad Retirement Act defines the term "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 * * * [45 U.S.C. § 231 (a)(1).]

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

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* * * transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The rail service provided by Coe Sun may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are transported solely within one state and the rail service is not a part of an interstate rail network, under section 10501(a)(2), above, Coe Sun would not be subject to Surface Transportation Board jurisdiction. It would therefore also not fall within the definition of "employer" set out in section 1(a)(1)(i) of the Railroad Retirement Act. The Board thus finds that Coe Sun is not a carrier by railroad.

The Railroad Retirement Act and the Railroad Unemployment Insurance Act also define the term "employer" to include:

(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, 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)(ii).]

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Section 202.4 of the Board's regulations (20 CFR 202.4) defines "control" 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

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carrier is in fact exercising direction of the policies and business of such a company or person.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines "common control" as follows:

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.

Coe Sun is under common control with a railroad employer by reason of its being wholly owned by Mr. Coe, who also controls Coe Rail, Inc., a covered employer under the Acts. Therefore, if Coe Sun provides a service in connection with the transportation of passengers or property by railroad, it is an employer under the Acts. Section 202.7 of the regulations (20 CFR 202.7) defines a service as being in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations.

There is no evidence that Coe Sun provides any service to Coe Rail or to any other carrier. Rather, the evidence shows that Coe Sun operates solely to provide public passenger excursion tours within one state. Because Coe Sun does not perform a service in connection with rail transportation, the Board finds that it is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever