

**EMPLOYER STATUS DETERMINATION**  
Mount Hood Railway Company  
Rails End Café, LLC

**AUG 07 2000**

This is the determination of the Railroad Retirement Board concerning the status of Rails End Café, LLC, 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.).

Mount Hood is a closely held Oregon corporation which was organized in 1987 to purchase a 22-mile short line from the Union Pacific Railroad. It was held to be an employer under the Acts effective October 16, 1987 (B.A. No. 3623). The line runs from Hood River, Oregon, to Parkdale, Oregon. The railroad owns nearly all of its real property and equipment, and, except for larger projects, maintains all of its own equipment and trackage. The railroad conducts year-round freight operations in addition to a seasonal passenger schedule which operates from April through December. Mount Hood runs both scenic excursions, aboard vintage Pullman cars, and an elegant Brunch and Dinner Train that has lounge and kitchen cars. Mount Hood carries approximately 50,000 passengers each year, and freight operations handle between 200 and 300 cars per year.

The railroad recently acquired Rails End Café, LLC, a small café located at its Parkdale terminus in order to keep the café open for its own passengers and for the local tourist traffic. In addition, the café will eventually serve as the primary caterer for the railroad's passenger operations. In this capacity, it would take over many of the food service needs that the railroad currently contracts out, such as barbeques, box lunches, parties, and a Brunch and Dinner Train food service. The café has been open under various ownerships, nearly continuously, since the late 1960s. It is a public restaurant, open during hours when the train is not present, and restaurant and catering personnel have nothing to do with the operation of the rail line. It is projected that up to 55 percent of the total revenues of the café will be attributable to serving tourists, local residents, and local businesses, and to catering contracts. The balance of its revenues will be attributable to the provision of food service to customers on Mount Hood's excursion railway.

The café is not a carrier employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether it is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it provides "service in connection with" rail transportation and if it is owned by or under common control with a rail carrier employer. If it fails to meet either criterion, it is not a covered employer within section 1(a)(1)(ii).

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The café is a limited liability corporation owned by Mount Hood. Accordingly, it is owned by a rail carrier employer. Mount Hood is a covered employer by reason of its freight service; if Mount Hood were engaged solely in the scenic excursion passenger business, it would not be an employer under the Acts. Rails End Café provides no service in connection with Mount Hood's freight service, the only service it provides to Mount Hood is in connection with the scenic excursion service. It is the opinion of the Board that since the only service provided by the Café to Mount Hood is in connection with that portion of Mount Hood's rail operation which, if not associated with Mount Hood's freight operations, would not be covered under the RRA and RUJA, it is not performing a service in connection with rail transportation within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act and section 1(a) of the Railroad Unemployment Insurance Act.

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