

**EMPLOYER STATUS DETERMINATION**  
Cape Cod Central Railroad, Inc. (CCCR)

**SEP 14 2000**

This is a determination of the Railroad Retirement Board concerning the status of the Cape Cod Central Railroad, Inc. (CCCR) 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).

Mr. John Kennedy, President of CCCR, provided information regarding the railroad. CCCR runs excursion trains on Cape Cod, Massachusetts. The train operates solely within Massachusetts and uses 23 miles of track which begins in Hyannis and ends in Bourne. The operation began May 28, 1999 and is seasonal, with the number of employees ranging from five employees in the winter months to as many as twelve part-time seasonal employees during the height of the season. CCCR does not own, control, or lease any track. The track used by CCCR is owned by the Commonwealth of Massachusetts Executive Office of Transportation & Construction, which leases the tracks to Bay Colony Railroad Corporation (BA 3112). CCCR does not interchange with any other railroad. According to Mr. Kennedy, CCCR's operation is smaller, but similar in service to the former railroads that operated the same tourist service over the past twenty years, identified as the former Cape Cod & Hyannis Scenic Railroad and the former Cape Cod Railroad. Neither of these former railroads paid into the railroad retirement system for the operation of excursion service.<sup>1</sup>

Section 1(a)(1) of the RRA (45 U.S.C. § 231(a)(1)), insofar as is relevant here, defines a covered employer as:

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<sup>1</sup>According to Railroad Retirement Board records, the Cape Cod & Hyannis Railroad (CC&H) operated from June 13, 1981 through November 7, 1988. In a legal opinion issued March 20, 1990 (L-90-40), the CC&H was found to be an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act for a brief period of time during which CC&H had a through ticket arrangement with Amtrak. Specifically, CC&H was found to be an employer during the period June 21, 1988 through September 2, 1988. On July 24, 1990, the Board ordered the relief of the CC&H from the liability for RUIA contributions for the period June 21, 1988 to September 2, 1988. Board records do not reflect an employer status determination for the Cape Cod Railroad, the latter railroad identified by Mr. Kennedy.

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(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of Title 49 [45 U.S.C. §231(a)(1)(i)].

Sections 1(a) and (b) of the RUIA (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The information summarized above indicates that CCCR is a carrier by rail, since it operates a passenger railway. However, CCCR does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of Massachusetts. Thus, it is not within the jurisdiction of the Surface Transportation Board. See, 49 U.S.C. 10501(a)(2)(A) (the STB has jurisdiction over transportation between a place in a state and a place in the same or another state as part of the interstate rail network).

The Board finds that since Cape Cod Central Railroad, Inc., does not perform service as a rail common carrier in interstate commerce, it is not an employer under the RRA and the RUIA.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever