

## Employer Status Determination

### **Tennessee Valley Railroad Museum, Inc. (doing business as Tennessee Valley Railroad)**

This is the decision of the Railroad Retirement Board with respect to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of Tennessee Valley Railroad Museum, Inc. (doing business as Tennessee Valley Railroad) (TVR).

Mr. Robert M. Soule, Chief Executive Officer of TVR, advises that TVR is a non-profit corporation founded in 1961, operating a historic railroad in Chattanooga, Tennessee since 1970. TVR has seven full-time employees and two part-time employees and operates three miles of rail line daily from May through Labor Day and on weekends from April through November. TVR also occasionally operates trains during summer weekends over about four miles of switching track of the Norfolk Southern Corporation to permit the excursion trains to run to the Chattanooga Choo Choo hotel complex. In operating over this line of track, it connects with the Norfolk Southern at Chattanooga.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

The term 'employer' shall include-

(i) any express company, sleeping-car company, and carrier by railroad, subject to part of [the Interstate Commerce Act];

(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 \* \* \*."

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

Section 10501 of the Interstate Commerce Act sets forth the general jurisdiction of the Interstate Commerce Commission (ICC) over transportation by rail. Section 10501(b) provides in

pertinent part that:

(b) The Commission does not have jurisdiction under subsection (a) of this section over

(1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle. (49 U.S.C. § 10501(b)(1)).

The rail service provided by TVR may be characterized as a tourist or excursion railroad operated solely within one state for recreational and amusement purposes. Although some of its summer weekend operations operate over Norfolk Southern Track and thus connect with the Norfolk Southern, there is no interstate service. Accordingly, TVR is not subject to the Interstate Commerce Act and is not a carrier employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. See the Board's Employer Status Determination regarding the Carthage, Knightstown & Shirley Railroad, Inc.

We turn next to section 1(a)(1)(ii) in order to determine whether TVR 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" railroad 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).

The evidence here shows that TVR is not under common control with a rail carrier employer. TVR is, therefore, not an employer within section 1(a)(1)(ii). Accordingly, the Board concludes that TVR is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

\_\_\_\_\_  
Glen L. Bower

\_\_\_\_\_  
V. M. Speakman, Jr.

\_\_\_\_\_  
Jerome F. Kever