

EMPLOYER STATUS DETERMINATION
Grand Canyon Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Grand Canyon Railway, Inc. (GCR) 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).

Information about GCR was provided by John H. James, its Executive Vice President. Mr. James stated that GCR has 137 employees and that employees were first compensated from April 25, 1988. GCR began operations on September 17, 1989, over 65 miles of track between Williams and Grand Canyon, Arizona. GCR does not interchange with any railroad. Its track is physically connected to the east-west track of the Atchison, Topeka & Santa Fe Railway (BA No.1702) (AT&SF) pursuant to a "standard form contract" for industry track for a private railroad connection. GCR does not "through-ticket" freight or passengers onto the national railway system.

Mr. James stated that GCR operates an entertainment business. Presently, its service component consists of an intra-state tourist railway, offering historical and entertainment-theme passenger excursions from Williams, Arizona to the south rim of the Grand Canyon and return. In addition, GCR offers certain ancillary services related to its excursion service, including a museum and a gift shop, and is exploring certain real estate developments on GCR-owned property in support of its business, such as a hotel in Williams.

Mr. James stated that the only formal relationships which GCR has with other railroads, other than membership in the American Shortline Railroad Association (BA No.7301) and the Tourist Railroad Association, Inc., are the standard form contract for industry track mentioned above and a real estate purchase agreement (and related agreements) with AT&SF relating to the purchase by GCR of certain real estate and right-of-way from AT&SF. In addition, GCR intermittently provides commercial shop services for the repair of locomotives belonging to the Arizona and California Railroad Company¹ (BA No.3777) on an "as needed" basis, has occasionally allowed AT&SF trains to turn on GCR's "Williams wye" as a courtesy for no charge, and on three occasions, AT&SF or GCR has permitted the other to conduct a private excursion on the other's trackage as a courtesy.

¹There is no indication that GCR is under common control with the Arizona and California Railroad Company.

Section 1(a)(1) of the RRA defines an "employer" to include:

- (i) any express company, sleeping car company, and

Grand Canyon Railway, Inc.

carrier by railroad, subject to subchapter I of chapter 105 of Title 49.

Section 1 of the RUIA contains essentially the same definition.

Subchapter I of chapter 105 of Title 49 is the portion of the Interstate Commerce Act which sets forth the provisions governing the jurisdiction of the Interstate Commerce Commission (ICC) over rail transportation. It provides in pertinent part that the ICC has jurisdiction over transportation by rail carrier to the extent that the transportation is in the United States and is between a place in a State and a place in another State (49 U.S.C. §10501(a)(2)(A)). That statute provides specifically 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 . . . (49 U.S.C. §10501(b)(1)).

In this case, GCR is a carrier by rail, since it operates a passenger railway. However, GCR does not transport passengers from a place in one State to a place in another State. Rather, it provides excursion service between two points entirely within one State. GCR does not interchange with any railroad, and does not "through-ticket" any passengers or freight onto any other rail carrier. GCR's operation of its tourist railroad is not, therefore, subject to the ICC's jurisdiction.

Because it is not a carrier by rail which is subject to the Interstate Commerce Act, it is determined that Grand Canyon Railway, Inc. is not an employer under the RRA and the RUIA.

Glen L. Bower

V.M. Speakman, Jr.

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