EMPLOYER STATUS DETERMINATION

MAGNUS METALS

This is the determination of the Railroad Retirement Board regarding the status of Magnus Metals (Magnus) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). Magnus has not previously been determined to be an employer under the RRA and the RUIA.

Information about Magnus was furnished by Kenneth Greenbaum, Vice President of Farley, Inc., the company which owns Magnus.[1] Farley, Inc. also owns West Point-Pepperell, Incorporated (West Point), a textile and apparel manufacturer with 10,000 employees headquartered in West Point, Georgia. Among West Point's assets is a wholly-owned subsidiary, the Chattahoochee Valley Railway Company (CV Railway), a rail carrier employer covered under the Acts (BA 2512) with service creditable from June 1900. CV Railway operates approximately 10 miles of track between West Point, Georgia and McGinty, Alabama, and interchanges with CSX Transportation.

According to information provided by Mr. Greenbaum, Magnus has been in business since about 1885, is not incorporated, and was acquired by Farley, Inc. on October 1, 1982. Magnus' business is described as designing, manufacturing, and distributing bronze traction motor support bearings and journal bearings for railroads, locomotives, and freight cars. Thus, 100% of Magnus' business is associated with railroad companies and users of railroad equipment. According to Mr. Greenbaum, all of Magnus's total revenues are derived from the sale of bearings to users of railroad equipment. However, none of Magnus' revenue is derived from CV, its rail carrier affiliate, none of Magnus' sales are made to CV, and none of Magnus' business is devoted to doing work for CV. Furthermore, Magnus shares no directors or officers with CV.

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

> (i) any express company, sleeping car company, and carrier by railroad, subject to [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

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[1] In Legal Opinion L-91-96, Farley, Inc. was found not to be an employer under the Acts.

> (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)(i) and (ii)).

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

There is no question that Magnus is itself not a carrier by rail. We note that Magnus and CV Railway, an employer, are "under [the] common control" of Farley, Inc. In determining whether Magnus is an employer under section 1(a)(1)(ii) of the Act, we must determine whether Magnus "operates any equipment. . . or performs any service. . ." In considering questions of coverage within the meaning of section 1(a)(1)(ii), courts have generally looked to the type of service being provided, the amount of work being performed for the railroad affiliate,and the amount of work being performed for the railroad industry.

Section 202.7 of the Board's regulations (20 CFR 20.7) defines service in connection with rail transportation as follows:

> The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is 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, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or persons have undertaken as a common carrier by railroad * * *.

In Railroad Concrete Crosstie Corp. v. Railroad Retirement Board, 709 F. 2d 1404 (11th Cir., 1983), the Court considered the application of the "service in connection with" language and section 202.7 of the Board's regulations to a company that was engaged in manufacturing crossties. The company argued that manufacturing is not a service, and that although it was under common control with a carrier it was not a covered employer under section 1(a)(1)(ii) of the RRA. In answer to this argument the Court stated that:

> Although Webster defines "service" as "useful labor that does not produce a tangible commodity," and a concrete crosstie is a tangible commodity, it is the provision of the crossties by Railroad concrete to Florida East Coast which constitutes the "service." It is undisputed that the vast majority of Railroad Concrete's output is sold to Florida East Coast. (Id. at 1408).

The Court went on to state that "Railroad Concrete's provision of concrete crossties is clearly related both 'functionally [and] economically,' 20 CFR § 200.7, to Florida East Coast's obligations as a carrier." Id.

In affirming the Board's ruling, the Court distinguished Concrete Crosstie, which did 90% of its business with Florida East Coast, from the situation addressed in a 1940 decision by the Board's General Counsel (L-40-403) wherein Pullman Standard Car Manufacturing Company was found not covered on the basis that, although Pullman Standard did business with affiliated carriers, most of Pullman Standard's business was with non-affiliated rail carriers and non-railroad companies. The Court summed up its decision as follows:

> Our opinion does not purport to hold that in all cases subsidiaries or affiliates that are directly or indirectly owned or controlled by a carrier and that manufacture products that are sold to the carrier will be held to be an employer under the Acts. Nor do we attempt to set any guidelines for determining when the amount of sales are substantial enough and the type of product so inextricably linked to the operation of the railroad that the sale of the product constitutes a "service . . . in connection with the transportation of passengers or property by railroad . . ." We simply decide that in a case such as this, when the nature of the relationship and the volume of sales between Railroad Concrete and Florida East Coast indicate that the subsidiary is economically dependent on the parent, and when the type of product is so obviously essential to the functioning of the railroad, that the subsidiary's provision of the product constitutes a service to the parent within the meaning of 45 U.S.C.A. §§ 231(a)(1) and 351(a). (Id. at 1411).

The "service" at issue here, like that in Railroad Concrete Crosstie, is the provision of manufactured products to the railroad industry. Unlike Railroad Concrete Crosstie, however, and in fact, unlike Pullman Standard, which performed some of its service for affiliated railroads, Magnus Metals does not do any business with its affiliated railroad. Although the Court in Railroad Concrete Crosstie declined to provide guidance as to the amount of business that must be conducted with an affiliated railroad in order for a manufacturing company to be a covered employer, it is clear that the Court in that case would require that an affiliate

employed in manufacturing provide some service to its rail affiliate in order to come with the definition of "employer" in section 1(a)(1)(ii) of the Railroad Retirement Act. In accordance with the decision in Railroad Concrete Crosstie Crop. v. Railroad Retirement Board, the Board finds that Magnus Metals is not an employer under Railroad Retirement and Railroad Unemployment Insurance Acts because it does not provide a service to its affiliated railroad.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting opinion attached)

Jerome F. Kever

DISSENT OF V. M. SPEAKMAN, JR.
ON THE EMPLOYER STATUS DETERMINATION OF
MAGNUS METALS

The majority of the Board has determined that Magnus Metals (Magnus) is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (the Acts).

It is undisputed that Magnus is not a carrier by rail, but it is equally clear that 100% of its revenues are from sales of bearings to users of railroad equipment, and that it is under common control with CV Railway, an employer under the Acts.

A reading of the definition of "employer" in the Acts is silent on the amount of rail service, if any, a manufacturing company must provide to an affiliate. It merely states that such service must be performed, not for whom.

Accordingly, I must respectfully dissent from the majority in this case, as the provisions of the Acts support no conclusion other than that Magnus should be a covered employer.

V. M. Speakman, Jr.

6/11/93
Date