

**Employer Status Determination  
RailAmerica, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of RailAmerica, Inc. as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. Information concerning RailAmerica has been provided by Ms. Mary Todd Carpenter who is counsel for RailAmerica.

RailAmerica was incorporated March 31, 1992. It is the parent company of Huron & Eastern Railway Company and Saginaw Valley Railway Company, Inc., rail carrier employers under the Acts (B.A. Numbers 3267 and 3282, respectively). Ms. Carpenter advises that RailAmerica:

\* \* \* is a business holding company, one of whose functions is to seek acquisitions of shortline railroads and light density branch lines purchased from larger railroads and other entities, and also to acquire stock in other companies] either related or unrelated to railroads. The company identifies and evaluates candidates to be acquired for operation at the subsidiary level, including rail properties to be operated as shortline or regional railroads and other businesses.\* \* \*.

Ms. Carpenter states that RailAmerica has no employees and that it "retains consultants, accountants and legal specialists to assist in evaluation of acquisition candidates." She states that M. John H. Marino is President and a Director of RailAmerica and of both railroads mentioned above; Mr. Gary O. Marino is Chairman of the Board, Vice-President, a Director, and Treasurer of RailAmerica and is Chairman of the Board, Vice-President, and a Director of both railroads; Mr. Eric D. Gerst is Vice-President, Secretary, General Counsel, Assistant Treasurer, and a Director of RailAmerica and of both railroads; and Donald D. Redfearn is Vice-President, Assistant Secretary, and a Director of RailAmerica and of both railroads.

The definition of an employer contained in section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) reads in part as follows:

The term 'employer' shall 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 (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.

There is no evidence that RailAmerica is an 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 RailAmerica 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 RailAmerica does not perform any service in connection with railroad transportation--either for its own rail subsidiaries or for any other carriers. RailAmerica is, therefore, not an employer within section 1(a)(1)(ii), and the Board does not need to address the issue of whether RailAmerica, the parent, is "under common control" with its subsidiary railroad. The Board notes that this issue is involved in a recent tax case involving identical language in the Railroad Retirement Tax Act. In that case, the Claims Court held that a parent company is not under common control with its subsidiary. Union Pacific Corporation v. United States, 26 Cl. Ct. 739 (1992).

It is the determination of the Board that RailAmerica is not an employer under the Acts.

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Glen L. Bower

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V. M. Speakman, Jr.

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