

Employer Status Determination

Tulare Valley Railroad Company

This is the decision of the Railroad Retirement Board regarding the status of Tulare Valley Railroad Company as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has transferred rail lines of approximately 158 miles in California and certain other rail line segments to Tulare, which on December 21, 1992, contracted with the San Joaquin Valley Railroad Company (SJVR), a rail carrier employer (B.A. No. 3780) to operate the rail lines. Southern Pacific Transportation Company has also transferred incidental trackage rights over one line segment to Tulare. According to ICC Finance Docket No. 32215, January 7, 1993, a notice of exemption was granted for the above-listed transactions. In a decision of March 31, 1993, the ICC denied a petition to revoke the transaction.

According to a letter of February 8, 1993, from Mr. Michael J. Van Wagenen, Vice President, Tulare, that company has no employees and operations began on December 22, 1992, on Tulare's lines by SJVR. In a letter dated March 30, 1993, Mr. Van Wagenen indicated that SJVR owned substantially all the equipment used in the operations. The service agreement between Tulare and SJVR provides that either Tulare or SJVR may provide the equipment.

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

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I 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 (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *.

Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax

Act (RRTA) (26 U.S.C. § 3231).

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Tulare has by contract provided for SJVR to operate the lines and does not do so itself. Although Tulare is a carrier in that it has rights over the rail lines in question, it is the Board's opinion that a company which has such authority but does not operate as a carrier and has no rail-related assets or anything else which would enable Tulare to operate as a carrier is not a covered employer under the Acts. Cf. Board Order 89-74. Accordingly, a majority of the Board (Labor Member dissenting) holds that Tulare is not an employer under the Acts.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting)

Jerome F. Kever

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