

Employer Status Determination CCP Holdings, Inc.

This is the decision of the Railroad Retirement Board regarding the status of CCP Holdings, Inc., as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

CCP was incorporated September 30, 1993, and began operations October 20, 1993; the first compensation was paid December 15, 1993. It is the parent company of Chicago, Central & Pacific Railroad and Cedar River Railroad Company, rail carrier employers under the Acts (B.A. Numbers 2630 and 3666, respectively). It is also the parent company of two non-rail companies, Iron Horse Properties, Inc., and Missouri River Bridge Company. CCP has three officers, only one of whom is paid by CCP; the other two are paid by the Chicago, Central & Pacific Railroad. CCP provides no services for its rail subsidiaries. Approximately 15 percent of its income will be derived from the non-rail subsidiaries. This percentage is expected to increase, as the non-rail subsidiaries are currently starting up.

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 CCP 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 CCP 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 CCP does not perform any service in connection with railroad transportation--either for its own rail subsidiaries or for any other carriers. Further, a recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the Railroad Retirement Tax Act held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of § 3231 of that Act. Union Pacific Corporation v. United States, 5 F. 3rd 523 (Fed. Cir. 1993).

The relevant facts of the Union Pacific case are indistinguishable from those presented by CCP. Accordingly, a majority of the Board determines that CCP is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts as it is not under common control with its rail carrier subsidiaries and provides no services in connection with rail transportation.

Glen L. Bower

V. M. Speakman, Jr. (dissenting)

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