

## **EMPLOYER STATUS DETERMINATION IES Railcar Service Center, Inc.**

This is a determination of the Railroad Retirement Board concerning the status of IES Railcar Service Center, Inc (Railcar) 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).

Railcar is a wholly-owned subsidiary of IES Transportation Inc. IES Transportation owns other subsidiaries including a covered employer, Cedar Rapids and Iowa City Railway (CRANDIC). IES Transportation is a wholly-owned subsidiary of IES Diversified Inc., which is itself a wholly-owned subsidiary of IES Industries, Inc, the parent holding company.

Information regarding Railcar was provided by Ms. Caroline D. Giddings, attorney for IES Industries, Inc. Ms. Giddings stated that Railcar was incorporated March 4, 1987, and began its operations on January 1, 1988. Railcar employs 53 employees. Railcar buildings and facilities are located on property owned by IES Transportation, Inc. The facilities include railroad track allowing for the movement of railcars by Railcar personnel within the facility. CRANDIC owns railroad track adjacent and connecting to the track on the Railcar facilities. This track is leased by Railcar from CRANDIC in order to provide ingress and egress to Railcar's facilities from the main track.

Ms. Giddings stated that Railcar is an independently operated subsidiary of IES Transportation Inc. which operates as a contract shop providing services of cleaning, lining, repairing and painting railcars for private railcar owners. Railcar does not employ any employees in common with CRANDIC. In 1992, .3% of Railcar's services were performed for CRANDIC and this work generated .3% of Railcar's revenues. Ms. Giddings stated that she did not know which customers of Railcar were railroads, but that a large percentage of Railcar's business is with private industry. In a call to Ms. Giddings on February 11, 1994, Ms. Giddings clarified that by "private industry" she meant private railcar owners do not operate as railroads.

Section 1 of the RRA defines the term employer to include the following:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(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 services (except trucking service, casual service, and the casual operations of equipment or facilities) in connection with the transportation of passengers or property by railroad.... [45 U.S.C. §231(a)(1)(i) and (ii)]

The RUIA contains the same definition.

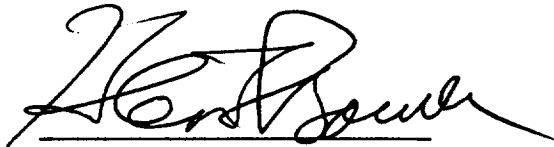
Section 202.5 of the Board's regulations, defines when a company or person is under common control:

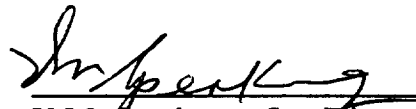
A company or person is under common control with a carrier whenever the control of such company or person is in the same person, persons, or company as that by which such carrier is controlled, [20 CFR 202.5].

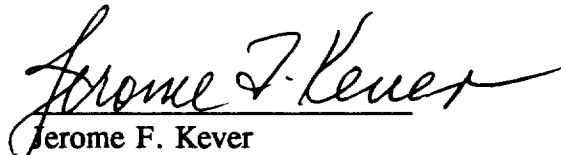
According to the information provided by Ms. Giddings, both Railcar and Crandic are owned by IES Transportation, Inc.. In addition, Peter W. Dietrich, the President and a director, Robert J. Kucharski, the Secretary/Treasurer, Lee Liu, a director, and Blake O. Fisher, a director, all serve as officers and directors of Railcar and CRANDIC. Based on the common ownership of Railcar and CRANDIC by IES and the common directors and officers of both companies the Board finds that Railcar is under common control with a rail carrier. The Board must now determine whether Railcar performs a service in connection with rail transportation. The facts of this case are quite similar to the facts addressed in Board Coverage Decision 93-79, In Re VMV Enterprises Incorporated. VMV performed only 2.5% of its services for its rail affiliate and derived only 2.5% of its revenues from that business. VMV did perform a substantial amount of its work, 55.7%, for the rail industry as a whole. Because of the small amount of work performed by VMV for its affiliated railroad, a majority of the Board found that VMV was not performing a service in connection with railroad transportation.

According to the information Ms. Giddings provided, only approximately .3% of Railcar's business comes from its railroad affiliate, CRANDIC. The .3% is less than the level of affiliate service found insufficient for coverage in Board Coverage Decision 93-79. Moreover, while Railcar does perform a larger portion of its services for the railroad industry, a substantial amount of its services is performed for non-railroads.

A majority of the Board therefore finds that IES Railcar Service Center, Inc. is not an employer under the RRA and the RUIA.

  
Glen L. Bower

  
V.M. Speakman, Jr. (Dissenting)

  
Jerome F. Kever