

EMPLOYER STATUS DETERMINATION

Rio Grande Pacific Corporation

This is a determination as to the employer status of Rio Grande Pacific Corporation (RGPC) under the Railroad Retirement Act (RRA) (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §351 et seq.).

RGPC was incorporated and began operations as a management consulting firm on May 30, 1986. RGPC provides services to railroad and non-railroad companies in the evaluation of shortline railroad acquisitions. It also seeks acquisitions of shortline railroads and light density branch lines and currently owns Wichita, Tillman & Jackson Railway Company, Inc., and Nebraska Central Railroad Company, Inc., which are employers under the Acts (B.A. numbers 3878 and 5732, respectively), and Idaho, Northern & Pacific Railroad Company, the employer status of which is currently under investigation.

RGPC provides 5.7 percent of its services for unaffiliated non-railroad clients, 72.3 percent for unaffiliated railroad clients, and 20.8 percent for its rail subsidiaries. Its officers serve as officers of the subsidiaries.

Section 1 of the RRA defines "employer" to include:

(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 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. [45 U.S.C. §231(a)(1)(i) and (ii)].

Section 1 of the RUIA (45 U.S.C. § 351) and section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. § 3231) contain essentially the same definition.

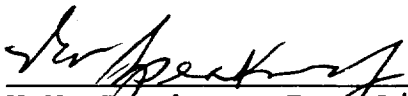
A recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the RRTA held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of §3231. Union Pacific Corporation v. United States, 5 F. 3d 523 (Fed. Cir., 1993).

The relevant facts of the Union Pacific case are indistinguishable from those presented by RGPC. Accordingly, a majority of the Board determines that RGPC 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.


An appropriate Form G-215 is attached.



Glen L. Bower



V.M. Speakman, Jr. (Dissenting)



Jerome F. Kever

Attachment