

EMPLOYER STATUS DETERMINATION

Southern Pacific Rail Corporation

This is the determination of the Railroad Retirement Board concerning the status of Southern Pacific Rail Corporation (SPRC), formerly known as Rio Grande Industries, Inc.,¹ 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). SPRC has not previously been held to be an employer under the Acts.

The evidence shows that SPRC is a stock holding company which wholly owns five subsidiaries. Two of those subsidiaries, Rio Grande Holding, Inc. and SPTC Holding, Inc. have controlling interests in corporations engaged in the rail transportation business and covered as employers under the RRA and the RUIA, as follows:

Rio Grande Holding, Inc.

The Denver & Rio Grande Western Railroad (BA No.1707)

SPTC Holding, Inc.

Southern Pacific Transportation Company (BA No.1713). This company in turn has a controlling interest in the following companies:

SPCSL Corporation (BA No.3364)
St. Louis Southwestern Railway Company (BA No.1819)
North Western Pacific Railroad Company (BA No.1711)
Visalia Electric Railroad Company (BA No.2744)
Portland Traction Company (BA No.5727)
Sunset Railway Company (BA No.3741)
Arkansas & Memphis Railway Bridge
and Terminal Company (BA No.4801)
The Alton & Southern Railway Company (BA No.4385)

According to Mr. William E. Saul, Assistant Vice President and Counsel-Taxes, SPRC has one employee whose function it is to obtain insurance for railroad and non-railroad companies "in the consolidated group." Mr. Saul also stated that the single employee of SPRC spends 50 percent of his time on railroad business.

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;

¹On May 4, 1993, Rio Grande Industries, Inc. changed its name to Southern Pacific Rail Corporation.

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(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))].

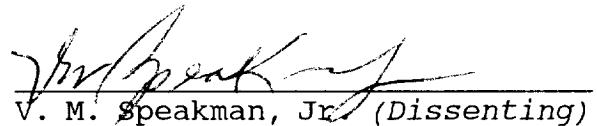
Section 1 of the RUIA (45 U.S.C. §351) and section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §3231) contain essentially the same definition.

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).

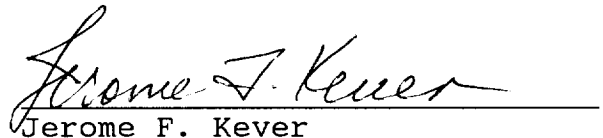
The facts in the Union Pacific case are indistinguishable from those presented by SPRC. Accordingly, a majority of the Board finds that Southern Pacific Rail Corporation is not and has never been an employer covered by the RRA and the RUIA because it is not under common control with its rail carrier subsidiaries.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting)



Jerome F. Kever