

**Employer Status Determination  
Pioneer Railcorp**

This is the decision of the Railroad Retirement Board with respect to the employer status of Pioneer Railcorp under the Railroad Retirement (RRA) and Railroad Unemployment Insurance Acts (RUIA).

In a letter dated March 11, 1993, Mr. Daniel A. LaKemper, stated that Pioneer was incorporated on January 31, 1986, and that it began operations on October 1, 1988. He stated that Pioneer is a holding company which owns the common stock of six class III railroads. Pioneer performs management services and property management. The management services include corporate planning, financial, legal and management services for its affiliated railroads. Ninety eight percent of Pioneer's revenue is derived from its affiliated railroads, two percent is derived from non-railroad activities.

Section 1 of the RRA defines the term "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 railroads, 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(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

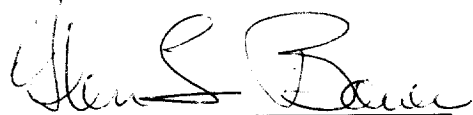
A recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the RRTA held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of §3231. Union Pacific Corporation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

The relevant facts of the Union Pacific case are indistinguishable from those presented by Pioneer. Accordingly, a majority of the

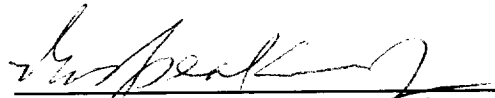
**Pioneer Railcorp**

Board determines that Pioneer 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.

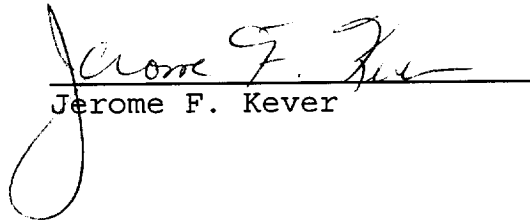
An appropriate Form G-215 is attached.



Glen L. Bower



V. M. Speakman, Jr. (Dissenting  
opinion attached)

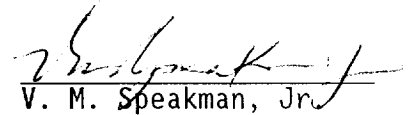


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DISSENT OF V. M. SPEAKMAN, JR.  
EMPLOYER STATUS DETERMINATION  
PIONEER RAILCORP

The majority of the Board has determined that Pioneer Railcorp is not under common control with its affiliated railroads. The basis for this determination is the recent decision of the United States Court of Appeals for the Federal Circuit regarding Union Pacific Corporation v. United States. I disagree with this court decision, as it is contrary to longstanding Railroad Retirement Board policy. Furthermore, the record shows that 98% of Pioneer's revenue is derived and from its affiliated railroad. Thus, it is clearly influenced and dependent on its activities.

I dissent from the majority opinion in this case and feel that Pioneer Railcorp should be a covered employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

  
V. M. Speakman, Jr.

3/3/75  
Date