

EMPLOYER STATUS DETERMINATION

Anschutz Marketing & Transportation Company

This is a determination of the Railroad Retirement Board concerning the status of Anschutz Marketing & Transportation Company (AMT) 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).

AMT is a wholly-owned subsidiary of The Anschutz Corporation (TAC) which owns approximately 31% of Southern Pacific Rail Corporation (SPRC) which is the parent company of several railroads, Southern Pacific Transportation Company (SPTC), St. Louis, Southwestern Railway (SSW) and the Denver and Rio Grande Western Railroad (D&RGW). All of these railroads are carriers under the Acts.

Information regarding AMT was provided by Mr. Robert T. Blanchard, Vice-President of AMT, in letters dated June 12 and October 20, 1995. AMT was incorporated August 11, 1987, and began its operations on that date. AMT employs 21 employees. According to the letter AMT is a privately held corporation which provides fuel purchasing, fuel service and fuel trading for the SPTC and other, non-railroad, entities. Approximately 10 AMT employees work full time on SPTC related activities; approximately 2% of AMT's gross revenues and two-thirds of its net revenues are derived from work for its affiliated companies.

The work for SPTC is not done on the property of the SPTC, nor was any office space leased by AMT from SPTC. AMT provides its own supplies and equipment for the services it performs for SPTC.

There is no sharing of supplies or equipment between SPTC or AMT.

Section 1 of the Railroad Retirement Act 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 Railroad Unemployment Insurance Act 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].

In order to exercise control within the meaning of the above-cited regulation a company must have the right or power to direct the policies and business of another company. See section 202.4 of the Board's regulations (20 CFR 202.4). As stated above AMT's parent, TAC, only owns 31% of the affiliated railroad parent, SPRC. AMT has one director in common with SPTC and SPRC. There are no other significant indicia of potential or actual control by TAC over SPRC. Therefore, it is the conclusion of the Board that AMT is not under common control with a railroad carrier within the meaning of the Board's regulations.

Glen L. Bower

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TO : The Board

FROM : Catherine C. Cook
General Counsel

SUBJECT : Coverage Ruling

Attached hereto for Board consideration is a proposed Board Coverage Decision with respect to Anschutz Marketing & Transportation Company (AMT). The proposed ruling finds that AMT is not under common control with a covered rail carrier.

Attachment

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