

## **EMPLOYER STATUS DETERMINATION**

### **Mexrail, Inc.**

### **Joint Venture between Kansas City Southern Industries, Inc. and Transportacion Maritima Mexicana**

This is the determination of the Railroad Retirement Board concerning the status of Mexrail, Inc. (Mexrail) 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). This decision will also address the employer status of a joint venture between Kansas City Southern Industries, Inc. and Transportacion Maritima Mexicana (TMM).

### **Mexrail, Inc.**

Information about Mexrail was furnished by the legal staff of Kansas City Southern Industries, Inc. (KCSI). KCSI is the parent company of Kansas City Southern Railway Company (BA No. 1806) (KCSR). Mexrail was incorporated on October 27, 1982 and began operations on that same date. In November 1995, KCSI purchased a 49% interest in Mexrail.

Mexrail is a holding company which owns the following: (1) 100% of the stock of Texas Mexican Railway Company (BA No. 1821) (TMRC); (2) the northern half of the International Bridge at Laredo, Texas, which it leases to the TMRC; and (3) real property (approximately 70 acres of land) in and around Laredo, Texas, which it leases to the TMRC. Mexrail conducts no operations and reports that it has no employees.

Mexrail has two directors and three officers who are also directors and/or officers of covered rail carrier employers. These individuals are listed below with their Mexrail titles and titles of their railroad positions.

| <b><u>Name</u></b> | <b><u>Mexrail Title</u></b> | <b><u>Railroad Title</u></b>  |
|--------------------|-----------------------------|---|
| Joseph D. Monello  | Director                    | KCSR - Director, Senior Vice<br>President, and Chief Financial<br>Officer |
| Michael R. Haverty | Director, President         | KCSR - Director, President, and Chief<br>Executive Officer                |
| Larry D. Fields    | Vice President              | TMRC - Vice President   |
| Zaragoza Solis III | Treasurer                   | TMRC - Treasurer  |
| Walter L. Winters  | Secretary                   | TMRC - Secretary  |

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

MexRail, Inc.

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(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 contains essentially the same definitions.

Since 49% of Mexrail is now owned by KCSI, which also owns 100% of KCSR, and since Mexrail has directors and officers in common with two covered carrier employers, it appears that Mexrail may be under common control with one or more rail carriers. The Board finds, however, that it need not make a finding on the issue of common control because it finds that Mexrail does not perform service in connection with the transportation of passengers or property by railroad. Specifically, the evidence in the record indicates that Mexrail acts solely as a holding company, operates no equipment or facilities, and performs no services for any other company. The Board therefore finds that Mexrail is not an employer under the RRA and RUIA.

**Joint Venture between Kansas City Southern Industries, Inc. and  
Transportacion Maritima Mexicana**

Information about the Joint Venture, which was formed on December 1, 1995, was furnished by the legal staff of KCSI. The Joint Venture does not have a name and is neither a partnership nor a corporation. Rather, it is a contractual relationship between KCSI and TMM. Its business address is in Mexico. The Joint Venture contract contains the understanding between KCSI and TMM concerning their participation in the privatization process of the Mexican national railway system. The Joint Venture will eventually lead to the formation of another

MexRail, Inc.

legal entity in Mexico, which may be structured under Mexican law in a manner that either is similar to a corporation or partnership. However, no such entity has yet been formed. In fact, the Joint Venture has no operations at this time. When the new entity is formed, it is contemplated that it will have no operations in the United States. Rather, it is anticipated that the new entity will participate in the Mexican national railroad privatization process. The parties anticipate that the new Mexican entity will be owned 51% by TMM and 49% by KCSI.

An article reporting the formation of the Joint Venture, which appeared in Business Wire, Inc. on Tuesday, December 12, 1995, stated that TMM, which is headquartered in Mexico City, is Latin America's largest integrated transportation company. The article stated that through its 21-branch offices and network of subsidiary companies, TMM provides a combination of ocean and land transportation services within Mexico.

The Joint Venture does not fall within the carrier definition of employer in section 1 of the RRA because it is not operating a rail carrier. Nor does it fall under the affiliate definition set out in section 1(a)(1)(ii) of the RRA. The remaining definitions of "employer" in the Act encompass carrier operations in bankruptcy or reorganization proceedings (section 1(a)(1)(iii)), railroad associations controlled and maintained by two or more carrier or affiliate employers (section 1(a)(1)(iv)), and railway labor organizations (section 1(a)(1)(v)). The Board finds that the Joint Venture does not fall within any of these remaining definitions and therefore finds that the Joint Venture is not an employer under the RRA and the RUIA.

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Glen L. Bower

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V. M. Speakman, Jr.

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Jerome F. Kever

MexRail, Inc.