

EMPLOYER STATUS DETERMINATION

Control Tower 19, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Control Tower 19, Inc. (Tower 19) 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).

Information about Tower 19 was supplied by Terry Haslett, its accountant. Tower 19 is a subsidiary of Railtex, Inc. (BA No. 6803), which currently owns/leases and operates twenty shortline railroads, including Austin & Northwestern Railroad (BA No. 3865), Chesapeake & Albemarle Railroad (BA No. 5531), Dallas, Garland & Northeastern Railroad (BA No. 3890), and Missouri & Northern Arkansas Railroad (BA No. 2863). B.M. Flohr, R.R. Lende, and L.D. Davis serve as officers and directors of Tower 19 and as officers and/or directors of Railtex-owned shortline railroads.

No authority was obtained from the Interstate Commerce Commission for the operation of Tower 19 because it does not run a railroad. Tower 19 is a control tower which regulates movements of trains, much like an air traffic control tower regulates air traffic. Tower 19 provides that service for Missouri-Kansas-Texas Railroad Company (BA No.1834), Dallas Terminal & Union Depot, Southern Pacific Transportation (BA No.1713), Atchison, Topeka & Santa Fe Railway Company (BA No.1702), and the Dallas Area Rapid Transit Authority. Tower 19 began operations on June 16, 1992.

Section 1(a)(1) of the RRA defines an 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.

Section 1 of the RUIA contains the same definition.

Since Tower 19 is a subsidiary of Railtex, Inc., which also owns

rail carriers covered by the RRA and the RUIA, Tower 19 is under common control with one or more rail carrier employers within the definition set out above. This conclusion is reinforced by the fact that all of the officers and directors of Tower 19 are also

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officers and/or directors of RAILTEX-owned rail carrier employers.

In addition, there is no question that by regulating the movement of trains, Tower 19 is providing a service in connection with railroad transportation.

It is therefore determined that Control Tower 19, Inc. became an employer under the RRA and the RUIA effective June 16, 1992, the date on which it began operations.

Glen L. Bower

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