

**EMPLOYER STATUS DETERMINATION**

**Hohorst-Drunic Transportation Company, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Hohorst-Drunic Transportation Company, Inc. (HDTC) 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 regarding HDTC was provided by the Bureau of Fiscal Operations, Division of Audit and Compliance, and HDTC's attorney John F. McHugh of McHugh & Sherman. HDTC was incorporated on March 12, 1986. The Articles of Incorporation state HDTC's purpose as follows:

To do any lawful act or thing for which corporations may be organized pursuant to the provisions of Title 14A, Corporations, General, of the New Jersey Statutes.

HDTC is located in Rumson, New Jersey and Manchester Center, Vermont. Mr. Henry Hohorst and Mr. William J. Drunic are the owners, officers and directors of HDTC.

HDTC entered into contract agreement on September 13, 1986 with Nashville & Eastern Railroad Corp. (N&E), Tennken Railroad Co., Inc. (TENN), and West Tennessee Railroad Corp. (WTRC), all of which are covered employers under the RRA and RUIA. The contract agreements state that HDTC as the contractor "is a consulting firm with expertise in the field of the creation, marketing, funding and rehabilitation of short line railways." Mr. Drunic, in an interview on September 29, 1993, with an employee from the Railroad Retirement Board's Division of Audit and Compliance stated that HDTC's purpose is to:

provide consulting management services to the RR's (engineering services, design/preparation of contracts, construction of spur lines, repairs bridges, upgrades track) provide real estate services, public relations, legal services, etc.

The contract agreements state in part:

The Contractor's services will include public relations, industry relations, governmental relations, acquisition of rehabilitation funding, lobbying and negotiations with State, Federal and Local authorities, evaluation, management and marketing of surplus real estate assets, marketing, customer relations, market research, equipment

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acquisition and rehabilitation planning, project design, quality control and oversight. [Coverage Audit Report, Exhibit 2,3 and 4]

The agreements may be terminated by either party on ninety days notice to the other party. Each agreement is structured to pay HDTC an initial base fee per year plus an adjustable sum per year to cover accounting clerical costs. HDTC is reimbursed for any costs and expenses incurred. Amounts are to be paid weekly based on a fifty-two week year. The payment terms are reviewed annually and adjusted as agreed upon by both parties.

HDTC employed six (6) employees during calendar years 1991-1992. Mr. Drunic, president of HDTC, stated that approximately 90% of HDTC's consulting and management service work is performed for N&E, TENN, and WTRC railroads. Mr. Drunic also stated that HDTC does not advertise HDTC services to the general public.

Section 1 of the RRA defines an 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(i) and (ii)].

The RUIA contains the same definition.

Sections 202.4 and 202.5 of the Board's regulations, define when a company or person is controlled by or under common control with a carrier. Those sections provide as follows:

§ 202.4 Control.

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A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstances, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.

§ 202.5 Company or person 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 202.4 & 202.5].

HDTC is not a carrier by railroad. However, according to the information provided, Mr. Drunic and Mr. Hohorst, who are the owners of HDTC, also serve as officers and directors of N&E, TENN, and WTRC. Furthermore Mr. Drunic, Mr. Hohorst, and Mr. Linn are officers of South Central Rail Corp (SCRC), a holding company formed for the sole purpose of owning the stock of N&E, TENN, and WTRC railroads. Consequently, control of HDTC, N&E, TENN, and WTRC is concentrated in the hands of these three individuals. HDTC is located in the same facility as N&E, TENN, and WTRC. Based on the facts in this case, the Board finds that HDTC is under common control with N&E, TENN, and WTRC. The question then becomes whether HDTC performs service "in connection with the transportation of passengers or property by railroad."

Section 202.7 of the Board's regulations defines service or operation in connection with railroad transportation as follows:

The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad...if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or

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companies or persons have undertaken as a common carrier by railroads....[20 CFR 202.7].

In Adams v. Railroad Retirement Board, 214 F.2d 534, 542 (9th Cir. 1954), the court held that the provision of "accounting services, the services of a purchasing department, correspondence and stenographic services...bridge and building services, and safety engineer and repairs for its automotive equipment and its general controlling stock" by a carrier's affiliate were services in connection with rail transportation so as to render the affiliate an employer under the Acts.

Ninety percent of HDTC's operations constitute managerial services for its three affiliate railroads similar to those found covered in Adams. Management services performed by HDTC are clearly essential to N&E, TENN, and WTRC's operations and are, in the Board's opinion, services in connection with rail transportation.

Therefore, the Board finds that HDTC is both under common control with N&E, TENN, and WTRC and HDTC is performing services in connection with railroad transportation. Accordingly, the Board finds that HDTC is and has been a covered employer under the Acts from the date it started to perform services to N&E, TENN, and WTRC, September 1, 1986.

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Glen L. Bower

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V. M. Speakman, Jr.

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