

## **EMPLOYER STATUS DETERMINATION**

### **Pioneer Railroad Equipment Co., Ltd.**

This is the determination of the Railroad Retirement Board concerning the status of Pioneer Railroad Equipment Co., Ltd. (PREL) 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 PREL was obtained through an audit conducted by the Board's Audit and Compliance Section.

PREL was incorporated on March 3, 1990, and began limited operations on that date. PREL is a wholly-owned subsidiary of Pioneer Railcorp, a holding company which the Board has held is not an employer covered by the RRA and RUIA (see B.C.D. No. 95-23, Notice No. 95-23.) Pioneer Railcorp also owns the following railroad subsidiaries:

- Alabama Railroad Co. (BA No. 5541)
- Alabama & Florida Railway Co. (BA No. 5551)
- Decatur Junction Railway Co. (BA No. 2358)
- Fort Smith Railroad Co. (BA No. 3885)
- Minnesota Central Railroad Co. (BA No. 2641)
- Mississippi Central Railroad Co. (BA No. 3589)
- Vandalia Railroad Co. (BA No. 2574)
- West Michigan Railroad Co. (BA No. 3374)

The officers and directors of PREL are the same for other operating subsidiaries of Pioneer Railcorp: Guy L. Brinkman - President and CEO, J. Michael Carr - Treasurer and Director, Daniel A. LaKemper - Secretary, Kevin L. Williams - Assistant Secretary, and Orvel L. Cox - Director.

The 1995 Annual Report of Pioneer Railcorp described PREL's operation as follows:

PREL leases equipment to the Company's subsidiary railroads and also purchases, sells and leases equipment to and from unrelated parties. PREL also earns income from non-company railroads on its fleet of approximately 750 railcars (as of December 31, 1995) while carrying freight on these railroads. PREL also engages in retail sales of promotional items.

In May 1997, Mr. J. Michael Carr, Treasurer of PREL, provided the following updated information about the company. PREL now owns approximately 850 rail cars, consisting primarily of grain hoppers, box cars, and gondolas. In addition, PREL owns approximately 50 locomotives. PREL does not lease specific rail cars to related subsidiaries, but instead provides railcars on an as needed and available basis. Several subsidiaries are charged monthly fees for the unlimited use of all PREL equipment, including rail cars, locomotives, vehicles, shop tools and equipment and other similar items. Mr. Carr stated that, "Every subsidiary railroad pays a monthly fee ranging from \$1,000 to \$8,000 per month for the complete equipment package from PREL." The total amount of revenue generated by PREL from the equipment fees charged to

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related subsidiaries was \$343,000 in 1996 and \$320,000 in 1995. Although PREL does not provide all of the railcars used by Pioneer Railcorp subsidiaries, Mr. Carr stated that approximately 50% of Pioneer Railcorp subsidiary loads are shipped in rail cars owned by PREL.

Mr. Carr also stated in his letter of May 23, 1997, that currently less than 10 rail cars are leased to private companies for specific loadings at their facilities at monthly rates of less than \$500 per car.

PREL has 3 locomotives leased to unrelated third parties at approximate monthly rentals varying between \$1,500 and \$2,000. In late 1995 and early 1996, PREL had 75 grain hoppers leased to Conagra at a total monthly rental of approximately \$40,000. That lease expired and was not renewed after 6 months. At one point in 1996, PREL had as many as 7 locomotives leased to unrelated third parties. Mr. Carr stated that PREL generated \$1.9 million dollars in 1996 from use of its railcars by non-affiliated railroads, which represents approximately 85% of its revenue for that year, "excluding affiliated intercompany income."

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

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV 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 [45 U.S.C. §231(a)(1)(i) and (ii)].

Sections 1(a) and (b) of the RUIA [45 U.S.C. §351 (a) and (b)] contain essentially the same definition.

PREL is owned by a holding company which also owns the 8 covered rail carrier employers listed earlier in this determination. Additionally, PREL has the same officers and directors as do those rail carrier subsidiaries owned by Pioneer Railcorp. The Board therefore finds that PREL is under common control with those rail carrier employers within the definition set out in section 1(a)(1)(ii) above.

The next question to be addressed is whether PREL provides a service in connection with rail transportation within the second part of the definition of employer in section 1(a)(1)(ii). PREL's primary business is the leasing of rail cars and equipment. Of its fleet of 850 rail cars and 50

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locomotives, less than 10 rail cars and 3 locomotives were leased to private companies at the time of Mr. Carr's most recent letter to the agency (May 1997). The vast majority of PREL's rail cars and locomotives are leased to the subsidiary rail carriers which are owned by the same holding company which owns PREL, Pioneer Railcorp. In May 1997, Mr. Carr stated that "conservatively" approximately 50% of Pioneer Railcorp subsidiary loads are shipped in rail cars owned by PREL.

A rail carrier cannot operate without rail cars and locomotives. Since PREL provides those to its rail carrier affiliates, a majority of the Board finds that PREL provides service in connection with railroad transportation within the meaning of section 1(a)(1)(ii) of the RRA and the corresponding section of the RUIA. A majority of the Board finds that PREL became an employer under the RRA and the RUIA beginning March 3, 1990, the date on which it was incorporated and began limited operations. Service to PREL may be credited subject to the limitations of section 9 of the RRA (45 U.S.C. §231h) and Part 211 of the Board's regulations (20 CFR 211).

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Glen L. Bower

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V. M. Speakman, Jr.

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Jerome F. Kever (Dissenting)