

EMPLOYER STATUS DETERMINATION

Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad

This is the determination of the Railroad Retirement Board regarding the status of Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad (TSW) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). TSW has not previously been determined to be an employer under the RRA and the RUIA.

Information about TSW was furnished by Douglas Shearer, Volunteer Treasurer of TSW. According to Mr. Shearer, the Yakima Valley Rail and Steam Museum ("Yakima") was incorporated as a non-profit museum group to restore the old railroad depot in Toppenish, Washington, as well as to operate and display antique railway equipment. One of the two lines in question, the White Swan line, runs from Toppenish to White Swan, Washington, and was abandoned by the Washington Central Railroad Company ("WCRC")¹ in 1992. In 1993, the Interstate Commerce Commission ("ICC") authorized the state of Washington to purchase the line. After the state purchased the line under the rail banking program, it was transferred to Yakima County, which has entered into an operating agreement with TSW (see, ICC Finance Docket No. 32487, decided April 21, 1994). According to Mr. Shearer, freight operations began on October 18, 1993. In a letter dated October 8, 1995, Mr. Shearer describes the freight operations as being conducted "on an as needed basis only" and stated that in 1994, "approximately 30 cars were delivered and returned on a total of 40 runs (20 deliveries and 20 returns of empties)." TSW receives freight from the WCRC and delivers empty cars to WCRC at Wesley Junction, but has been "unable to negotiate a formal interchange agreement." All volunteer crews, usually consisting of an engineer and brakeman, and occasionally trainees, conduct the freight operations.

In his most recent letter of November 6, 1996, Mr. Shearer states that freight operations are not scheduled, "they are conducted when there are cars to move." Mr. Shearer states that approximately 80 freight cars were moved in the first three years; the freight trains average two cars and range in size from 1 to 4 cars. Mr. Shearer further stated that "during the most active months movement take place 4 to 6 times a month, but most months have no movement." He reiterated that the crew consists of an engineer and brakeman, plus "any museum members who may wish to participate in crew training."

In addition to the freight operations, TSW operates excursions on the White Swan branch line from June to October, on Saturdays, Sundays, holidays, and charters. In 1996, TSW moved approximately 50 excursion trains with either one or two passenger cars. Mr. Shearer describes operational time on the White Swan branch as "approximately 2/3 passenger and 1/3 freight."

¹ The WCRC has been found to be an employer under the Acts. B.A. No. 3651.

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The only information provided by Mr. Shearer about the second line, the Royal Slope line, was in his letter of October 8, 1995. In that letter, he stated that the Royal Slope line will be operated as a division of the TSW under circumstances similar to those of the White Swan branch, i.e., the line was abandoned by the Milwaukee Road and purchased by the Washington State Department of Transportation as part of the rail banking program. The line is under the control of the Port of Royal Slope. Mr. Shearer stated that TSW moved approximately ten cars in 1994, but "stopped operations when crop prices led the shipper to stop all rail shipping. We have a new agreement with the Port and the shipper but so far there has been no movement this year." Mr. Shearer states that authority to operate the line was obtained through the ICC, however, in his letter of May 12, 1996, he states "we have not sought an Interstate Commerce Commission decision on the Royal Slope Line."

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, United States Code;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition.

Section 10501 of Chapter 105 of Part A of subtitle IV of Title 49 provides in pertinent part that the Surface Transportation Board has jurisdiction over transportation in the United States between a place in

- (A) a State and a place in the same or another State as part of the interstate rail network;

The evidence of record indicates that TSW operates primarily as an excursion railroad. Because TSW operates a recreational excursion service entirely within one state and has no interchanges, its excursion service is not subject to the jurisdiction of the Surface Transportation Board and does not fall within the definition of a carrier employer under the RRA and RUIA. Accordingly, operation of an excursion railroad by Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad would not bring it within the definition of employer under the RRA and the RUIA.

Section 202.3 of the Board's regulations (20 CFR 202.3) provides that where a company that is principally engaged in business other than carrier business, also engages in some carrier business, coverage

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under the RRA and RUIA may be limited to the department which is engaged in carrier business. Factors which the Board considers in making a determination as to whether segregation may be applied include the following:

1. The primary purpose of the company on and since the date it was established.
2. The functional dominance or subservience of its carrier business in relation to its non-carrier business.
3. The amount of its carrier business and the ratio of such business to its entire business.
4. Whether its carrier business is a separate and distinct enterprise.

The evidence of record indicates that segregation is applicable to cover that portion of the Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad which operates the freight service on the White Swan line and the Royal Slope line. That portion of the Yakima Valley Rail & Steam Museum d/b/a Toppenish, Simcoe & Western Railroad which operates the freight service became a rail carrier employer under the RRA and RUIA effective October 18, 1993, the date it began freight operations. Operation of the excursion railroad is not covered under the Acts administered by the Board.

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