

**Texas Train Management Company
Rail Operators, Incorporated
Employer Status Determination**

This is the decision of the Railroad Retirement Board regarding the status of Texas Train Management Company (Texas Train), and Rail Operators, Incorporated, as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In 1992, the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) notified the Interstate Commerce Commission that it proposed to transfer approximately 381 miles of rail line running from San Angelo Junction, Texas, to the international border with Mexico in the vicinity of Presidio, Texas, to the South Orient Rural Rail Transportation District, an instrumentality of the State of Texas.¹ At the same time, Santa Fe proposed to transfer the common carriage business and right to operate over the line to South Orient Railroad Company, Ltd., (South Orient), a limited partnership registered in Texas on December 13, 1991. After deliberation, the Interstate Commerce Commission approved the bifurcated transfer to Transportation District and South Orient. See: South Orient Railroad Company, Ltd., -- Acquisition and Operation Exemption -- Line of the Atchison, Topeka and Santa Fe Railway Company, 1992 ICC LEXIS 31971, Finance Docket No. 31971, September 2, 1992.

Initially, South Orient contracted with Rail Operators, Inc., to conduct the rail carrier service. In Board Coverage Decision 93-5, the Railroad Retirement Board determined that South Orient was not a covered employer under the Acts because it supplied no equipment or employees for the performance of the rail carrier service. However, the Board further determined at that time that as Rail Operators conducted train service in interstate commerce over the line owned by Transportation District, Rail Operators was a covered rail carrier employer under the Acts. Texas Train, a Texas corporation formed August 30, 1993, has now advised that it assumed the operations formerly conducted by Rail Operators effective August 23, 1993.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

¹Transportation District later sold the line to the Texas Department of Transportation.

(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 (other than trucking service, casual service, and the casual operation of equipment and facilities) in connection with the transportation of passengers or property by railroad * * *.

Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. § 3231.

Texas Train has now assumed the rail carrier operations in interstate commerce formerly conducted by Rail Operators, Incorporated. Accordingly, Texas Train became a rail carrier employer under the Acts effective August 23, 1993, the date it began operations over the line. Further, as Rail Operators, Incorporated conducted no business other than the contract rail service for South Orient, Rail Operators, Incorporated ceased to be a covered employer under the Acts with the close of business August 22, 1993.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

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TO: The Board

FROM: General Counsel

SUBJECT: Texas Train Management Company, Ltd.
Rail Operators, Incorporated
Employer Status

Attached is a draft determination that Texas Train Management Company, Ltd., is a covered employer. In addition, the status of Rail Operators, Incorporated, as an employer is terminated.

Catherine C. Cook

Attachment