B.C.D. 01-41

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EMPLOYER STATUS DETERMINATION
Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad
Austin Area Terminal Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad ("AATR Division") and the status of Austin Area Terminal Railroad, Inc. ("AATR Inc.") as employers 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).

In Surface Transportation Board (STB) Finance Docket No. 33860, decided March 28, 2000, AATR Division filed a notice of exemption under 49 CFR 1150.31 to operate approximately 162 miles of rail line owned by Capital Metropolitan Transportation Authority[1] ("CMTA") between milepost AUNW-MP0.0 (SPT MP57.00), west of Giddings, Texas, and milepost AUMW – MP154.07 (SPT – MP99.04), at Llano, Texas, including the Marble Falls Branch (6.43 miles), the Scobee Spur (3.3 miles), and the Burnet Spur (0.93 miles), in Bastrop, Burnet, Lee, Llano, Travis and Williamson Counties, Texas. The lines were previously operated by Central of Tennessee Railway & Navigation Company Incorporated d/b/a the Longhorn Railway Company (BA No. 5550).

Information about AATR Division was furnished by the law firm of Galland, Kharasch, Greenberg, Fellman & Swirsky, P. C. AATR Division was created as an operating division of Trans-Global Solutions, Inc. ("Trans-Global")[2] when it was awarded a temporary (i.e., four-month) contract to operate over a rail line owned by CMTA. AATR

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[1] Capital Metropolitan Transportation Authority ("CMTA") is the Austin, Texas regional transit authority, a body corporate and political subdivision of the State of Texas. In STB Finance Docket No. 33596, decided May 20, 1998, CMTA obtained authority to acquire this line of railroad and advised the STB that the line would continue to be operated by the Central of Tennessee Railway & Navigation Company, Inc. d/b/a the Longhorn Railway.

[2] Trans-Global Solutions, Inc. is a national and international provider of railroad and bulk material logistical services and has a number of operating divisions.

Division began operating the railroad April 1, 2000, with 36 employees. The initial four-month contract with CMTA was extended for an additional period, the term of which was to expire in February 2001. AATR Division provided rail freight service to customers located along the line of railroad owned by CMTA and interchanged with the Union Pacific Railroad Company and the Burlington Northern Santa Fe Railroad Company.

In a letter dated December 8, 2000, attorney Edward D. Greenberg of the law firm of Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C. advised the Board's Audit and Compliance Section that CMTA and Trans-Global had agreed that the responsibility for providing the railroad services over CMTA's rail line should be transferred from an operating division of Trans-Global to a new wholly-owned subsidiary of Trans-Global named the Austin Area Terminal Railroad, Inc. ("AATR, Inc."). CMTA, Trans-Global, and AATR, Inc. entered into a Novation Agreement, by which AATR, Inc. would acquire all assets and obligations and liabilities of Trans-Global necessary to perform this service. On December 6, 2000, AATR, Inc. filed a Notice of Exemption with the STB to obtain authority to become the new operator on the subject line (Finance Docket No. 33972). On December 13, 2000, AATR Division transferred its employees to AATR, Inc. and AATR, Inc. took over the railroad operations. The December 8 letter also advised the Board's Audit and Compliance Section that CMTA had recently notified Trans-Global and AATR, Inc. that CMTA had been somewhat delayed in issuing a Request for Proposals to operate CMTA's rail line after February 3, 2001 and inquired whether AATR, Inc. would be willing to continue to provide service under its existing contract for up to an additional 30 days. AATR, Inc. had advised that it was amenable to CMTA's request.

In a letter dated April 9, 2001, attorney Greenberg advised that AATR, Inc. had just received notice that it was awarded a five-year extension of its contract to provide rail freight services to CMTA.

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. 45 U.S.C. §231(a)(1)(i).

Sections 1(a) and (b) of the RUIA(45 U.S.C. §351(a) and (b)) contain essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. §3231).

Section 202.2 of the Board's regulations provides that:

> Any company or person principally engaged in carrier business is an employer. 20 CFR 202.2

Section 202.3 of the Board's regulations provides in pertinent part that:

(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. * * * * *

(b) In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer. 20 CFR 202.3.

The information summarized above indicates that from April 1, 2000 until December 13, 2000, a division of Trans-Global Solutions, Inc.

conducted railroad operations over the 162 miles of track described earlier in this decision. The main business of Trans-Global Solutions, Inc., is not and was not, however, the operation of the railroad. Pursuant to section 202.3 of the Board's regulations, the Board finds that only the division of Trans-Global which conducted railroad operations over CMTA's rail line, i.e., Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad, was a rail carrier employer within the definition of section 1(a)(1)(i) of the RRA and the corresponding section of the RUIA from April 1, 2000 until December 13, 2000.

Effective December 13, 2000, a subsidiary of Trans-Global Solutions, Inc. began to conduct railroad operations over the 162 miles of track. The Board finds that Austin Area Terminal Railroad, Inc. became a rail carrier employer under the RRA and the RUIA effective December 13, 2000.

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