B.C.D. 01-43

EMPLOYER STATUS DETERMINATION MAY 17 2001
DECISION ON RECONSIDERATION
Tracks Traffic and Management Services, Inc.

This is the determination on reconsideration of the Railroad Retirement Board concerning the status of Tracks Traffic and Management Services, Inc. (Tracks), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

In a decision dated April 4, 2001 (B.C.D. No. 01-33), the Board held that Tracks became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts as of January 1, 1988, based on Tracks being under common control with a number of railroads and performing services for those railroads.

Mr. Robert N. Gentile, Vice President – Law, General Counsel and Secretary, requested reconsideration of the effective date of coverage of Tracks, asserting that Tracks became a covered employer on January 1, 2001, rather than on January 1, 1988. In support of that request, Mr. Gentile clarified information previously provided by the company. Specifically, Mr. Gentile stated that except for a period beginning in 1993 and ending in early 1998, Tracks had no employees prior to January 1, 2001. Those employees who worked for Tracks during that period from 1993 to 1998 provided accounting services exclusively to water carriers, not railroads. Services which Tracks employees began to perform on January 1, 2001 had been previously provided by management and union-represented employees of the Bessemer and Lake Erie Railroad Company, and not by Tracks. These Bessemer employees had performed administrative and support functions for all of Transtar's subsidiaries,[1] including eight rail carriers. Effective January 1, 2001, 102 Bessemer management employees were transferred to Tracks and approximately 100 Bessemer employees represented by the Transportation Communications International

[1] Transtar, Inc. owns Tracks.

Tracks Traffic and Management Services, Inc.

Union (TCIU) were to be transferred to Tracks at a later date in accordance with the terms of an Implementing Agreement to which Tracks, Bessemer and TCIU are parties. Without exception, the management and the represented employees were covered by the Railroad Retirement Act prior to their transfer to Tracks.

In light of Mr. Gentile's explanation, the Board finds that Tracks began to perform service in connection with railroad transportation effective January 1, 2001. Accordingly, the Board revises its previous decision to hold that Tracks became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective January 1, 2001.

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