B.C.D. 01-87

DEC 2 0 2001

EMPLOYER STATUS DETERMINATION
Texas Central Business Lines Corporation

This is the determination of the Railroad Retirement Board concerning the status of Texas Central Business Lines Corporation 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.).

Information regarding Texas Central was provided by Jonathan Lorman, Vice President. According to Mr. Lorman, Texas Central began non-rail operations on or about March 1, 1999, and began rail operations on August 1, 2001. Texas Central reports that it currently has four employees involved in rail-related work. The company is owned by seven individuals, David D. and Jerry Watson, Jonathan and Virginia L. Lorman, James R. Seidel, K. K. Siedel, and Numa G. Bulot.

In Surface Transportation Board Finance Docket No. 33997, Texas Central filed a notice of exemption to provide switching service over approximately five miles[1] of yard and switching track located within the MidTexas International Center, Inc. (Inland Port), an industrial park located south and east of Dallas, Texas. Texas Central interchanges with the Burlington Northern Santa Fe Railway and intends to interchange with the Union Pacific Railroad. Approximately ten percent of employee time is spent on rail-related operations. The balance of Texas Central's operations include trucking and motor vehicle management.

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

> (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;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as

[1] The notice refers to "approximately 5.0 miles" of track; Mr. Lorman refers to "approximately 3.5 miles" of track.

does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

Section 202.3 of the regulations of the Board provides 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. The determination will be made in the light of considerations such as the following:
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> (1) The primary purpose of the company or person on and since the date it was established;
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> (2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
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> (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.
>
> (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.

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In this case, the carrier business of Texas Central is a small proportion of its entire enterprise, and the primary purpose of Texas Central is non-railroad transportation business. Mr. Lorman advises that the service of employees working on the switching operation will be reported separately, which is sufficient to meet the requirement that there be an identifiable separate and distinct enterprise conducting carrier business. Texas Central as an employer covered under the Acts is thus "less than the whole of a legal entity".

Since Texas Central is not predominantly engaged in carrier business, and its only carrier business is the operation of the switching operation described above, it is the determination of the Board that section 202.3 of those regulations applies so that Texas Central is a covered employer effective August 1, 2001, only to the extent that its employees engage in the operation of the switching operation and that only service performed while conducting Texas Central's rail operations is creditable under the Railroad Retirement and Unemployment Insurance Acts.

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