B.C.D. 02-90

DEC 0 6 2002

EMPLOYER STATUS DETERMINATION –
Cascade Transportation Inc.

This is the determination of the Railroad Retirement Board concerning the status of Cascade Transportation, Inc., [Cascade] 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.).

Mr. Randolph N. Pike, President of Cascade, provided information about Cascade. In a letter dated August 7, 2002, Mr. Pike described Cascade as a company that does not interchange with any railroads. Cascade entered into a contract dated March 27, 2002, with S.D. Warren Company, doing business as Sappi Fine Paper North America, to provide intraplant switching on track that is 100 percent owned by the paper company.

An inbound train is delivered to the paper mill by Guilford Transportation Industries[1] or its subsidiary Maine Central Railroad Company[2]. Cascade moves and switches railroad cars on track at the plant. Cascade turns all outbound traffic over to Guilford Transportation as one block of cars each morning. Cascade does not own any railroad equipment but leases a locomotive from Guilford. Cascade has not been held to be a carrier by the Surface Transportation Board, and owns no track and has no terminal points.

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;

[1] On July 14, 1982, Guilford was held not to be an employer under the Acts in Legal Opinion L-82-169.
[2] An employer under the Acts effective August 1, 1862 (B.A. No. 1107).

Cascade Transportation Inc.

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

Initially, the definition section of Part A of Subtitle IV of Title 49 of the United States Code defines "railroad" to include a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U.S.C. § 10102(6)(C)). That Act also provides 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" (49 U.S.C. § 10501(a)(2)). A terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U.S. v. California, 297 U.S. 175 (1936). The Board has held switching railroads to be covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts where they act in the capacity of a common carrier subject to the jurisdiction of the Surface Transportation Board.

Where switching operations are conducted by a plant owner for itself, these operations do not result in the plant owner being a covered employer under the Acts. In other words, where a manufacturer ships its goods to a carrier, that activity does not result in the manufacturer being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. Analogously, where a company contracts with a manufacturer to ship the manufacturer's goods to a carrier, that activity will not result in the company being a covered employer. In both cases, the shipper is a private carrier.

Cascade Transportation Inc.

Cascade is a private carrier; it contracts only with the paper company to move its product within the paper company's plant. It does not hold itself out to the general public to provide carriage over the paper company's track.

The Board therefore finds that Cascade Transportation, Inc., is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever