B.C.D. 04-20

EMPLOYER STATUS DETERMINATION
The Railroad Associates Corporation

APR 06 2004

This is the determination of the Railroad Retirement Board concerning the status of The Railroad Associates Corporation (TRAC) 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.).

TRAC is a privately held company which was incorporated in October 2000 to perform consulting and engineering for private industries. TRAC's website states that TRAC specializes in "railroad feasibility studies, design and construction management services for railroads, industry, and government facilities" and that its "'turnkey' service is utilized * * * to take rail projects from concept to completion in a very efficient and economical manner." A representative of TRAC states that TRAC has four employees, none of whom perform work on railroad company owned property. The representative reports that TRAC owns computers and survey equipment. He states that TRAC does not provide services for a rail carrier, but does submit plans on behalf of private industries to be approved by railroad officials. The Surface Transportation Board has not issued any ruling regarding TRAC.

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

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

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The evidence of record establishes that TRAC is not a carrier operating in interstate commerce. There is also no evidence in the record that it is under common ownership with any employer under the Acts. Accordingly, it is determined that TRAC is not an employer within the meaning of section 1(a)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) and the corresponding provision of the Railroad Unemployment Insurance Act.

Michael S. Schwartz

V. M. Speakman, Jr.
(Separate concurring opinion attached)

Jerome F. Kever

Concurring Opinion of V. M. Speakman, JR
Employer Status Determination
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I concur with the result in this case, but less the public think the Board has nothing better to do than to issue decisions on enterprises over which it clearly has no jurisdiction, I feel I should note that Railroad Associates did request a ruling from the Board on its status under our statutes. I have previously indicated that we should state in our Board coverage decisions why we are issuing a decision.

VM Speakman, Jr.
V. M. Speakman, Jr.

3-29-04
Date