

Employer Status Determination Iron Road Railways, Incorporated

This is the decision of the Railroad Retirement Board regarding the status of Iron Road Railways, Incorporated (Iron Road) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Iron Road is a holding company which reports that it wholly owns five railroad subsidiaries, including two which have been determined to be rail carrier employers under the Acts: Bangor & Aroostook Railroad (BA. No. 1101), and Canadian American Railroad (BA No. 2127). Iron Road, which currently has 12 employees, states that it provides managerial, financial, and marketing services for its subsidiaries.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(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).

Iron Road is not a carrier by rail. Further, a decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the Railroad Retirement Tax Act held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of section 3231 of that Act. Union Pacific Corporation v. United States, 5 F.3d 523 (Fed Cir. 1993).

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The relevant facts of the Union Pacific case are indistinguishable from those presented by Iron Road. Accordingly, a majority of the Board determines that Iron Road is not under common control with its rail carrier subsidiaries. Therefore, Iron Road is not a covered employer under the Acts.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting)

Jerome F. Kever