EMPLOYER STATUS DETERMINATION JAN 2 2 1999
Carolina Leasing and Contracting, Inc. (CL&C)

This is a determination of the Railroad Retirement Board concerning the status of Carolina Leasing and Contracting, Inc. (CL&C) as an employer under the Railroad Retirement Act (45 U.S.C.§ 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

Mr. Robert Menzies II, President of CL&C, provided information regarding CL&C. According to Mr. Menzies, CL&C is a privately held corporation of which Mr. Menzies holds 100 percent of the controlling stock. CL&C leases locomotives to the Aberdeen, Carolina & Western Railway (AC&W) (BA No. 2595), of which Mr. Menzies is also the President and controlling shareholder. According to Mr. Menzies, CL&C owns no facilities and receives 100 percent of its revenue from the leasing of locomotives to AC&W. Mr. Menzies stated that CL&C began operations on December 9, 1992 and currently has no employees.

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).

The information summarized above indicates that CL&C is not a rail carrier employer under the definition of employer in subparagraph (i) quoted above.

This conclusion, however, leaves open the question as to whether CL&C is an employer under the definition in subparagraph (ii), commonly referred to as the "affiliate definition."

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Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it is owned by or under common control with a rail carrier employer and if it provides "service in connection with" railroad transportation. If it fails to meet either condition, it is not a covered employer within section 1(a)(1)(ii).

Mr. Menzies is the 100 percent owner of CL&C. Additionally, he also owns 100 percent of the stock of AC&W, a covered class III rail carrier employer under the Acts. Mr. Menzies also serves as President of both companies. Accordingly, the Board finds that CL&C is under common control with the AC&W.

Section 202.7 of the Board's regulations (20 CFR 202.7) defines service in connection with railroad transportation as follows:

> The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Thus, if CL&C performs a "service in connection with" railroad transportation, it is a covered employer under the Acts.

According to Mr. Menzies, CL&C leases locomotives to AC&W. Since a rail carrier cannot operate a train without a locomotive, a majority of the Board finds that CL&C is providing a service in connection with railroad transportation.

The information summarized above indicates that CL&C is under common control with and, in the view of the majority, performing a service in connection with railroad transportation for AC&W. Accordingly, it is determined that Carolina Leasing and Contracting, Inc. became an employer

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within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act [(45 U.S.C. §231(a)(1)(ii)] and the corresponding provision of the Railroad Unemployment Insurance Act effective December 9, 1992, the date operations began.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever (Dissenting)