B.C.D. 04-29

MAY 27 2004

EMPLOYER STATUS DETERMINATION
American Rail Dispatching Center, Inc.

This is the determination of the Railroad Retirement Board concerning the status of American Rail Dispatching Center, Inc (ARDC) 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. Gary Laakso, Vice President and Regulatory Counsel, ARDC, advised that ARDC commenced service on January 1, 2004. He stated that ARDC is a wholly-owned subsidiary of RailAmerica Transportation Corp., a wholly-owned subsidiary of RailAmerica, Inc..[1] Neither RailAmerica Transportation Corp. nor RailAmerica, Inc. are employers covered under the RRA and RUIA. ARDC provides dispatching services to railroad customers, which services include emergency incident reporting, written records of train movements and issuance of track warrants to train crews. These services are provided to thirteen railroad employers, all except one of which are owned by RailAmerica, Inc.. ARDC has no Surface Transportation Board authorization.

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 * * *.

[1] RailAmerica, Inc. has been determined not to be a covered employer under the Acts. See B.C.D. 93-54.

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

ARDC is clearly not a carrier by railroad. However, because ARDC is a wholly-owned subsidiary of RailAmerica Transportation Corp., which is a wholly-owned subsidiary of RailAmerica, Inc., and because RailAmerica, Inc. owns or controls almost all the railroads which ARDC services, ARDC is under common control with a railroad employer. The evidence demonstrates that the service provided by ARDC to those railroads is service in connection with railroad transportation.

In view of the foregoing, the Board finds that American Railroad Dispatching Center, Inc. became a rail carrier employer under the RRA and RUIA effective January 1, 2004, the date on which it commenced operations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever