

MAY 01 2006

**Employee Service  
LP**

This is the decision of the Railroad Retirement Board regarding whether the services performed by LP for the Grand Trunk Western/Canadian National Railway during the period from August 1996 through June 2001 constituted employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts. LP has requested a ruling on this issue. The Grand Trunk Western/Canadian National Railway is a covered employer under those Acts.

LP advised that she retired from the Grand Trunk Western Railroad Company on December 31, 1995. She described the work that she performed while an employee as set out below. She was responsible for day-to-day administration of the Grand Trunk Western's employee benefit and pension plans. This work included making plan interpretations, communicating with employees and retirees (both verbally and in writing), verifying all pension calculations done by the Pension & Benefits Clerk (later the Human Resources Coordinator – Benefits), assuring the accurate and timely payment of premiums for several benefit plans, acting as the first level of appeal for benefit denials (the Director of Personnel, her supervisor, being the second), assuring the accuracy of deductions from employees' wages and the amounts forwarded to the 401(k) administrator, processing distributions and loans from the 401(k) plans, and supervising the Pension & Benefits Clerk. LP's annual tasks included coordinating audits between outside auditors and company personnel, providing actuarial census data for the pension and benefit programs, complying with government requirements by filing annual reports, providing appropriate notifications to plan participants, and processing payments to the Pension Benefit Guaranty Corporation.

LP advised that, after her retirement, her former duties had been distributed to other employees. The Pension & Benefits Clerk handled day-to-day administration of the employee benefit and pension plans and reported directly to the Director of Personnel. The work associated with the 401(k) plans had been transferred to another management employee. LP stated that she was requested to return to work for a specific project in order to assist with the large volume of pension calculations required by the United States Department of Labor to be reported to those terminated employees not yet eligible to receive a pension. The estimated time limit for this project was five months.

LP advised that she began this work on August 1, 1996, at the same location she had worked at previously. She stated that all office materials and support staff were furnished by Grand Trunk. Later in 1996, LP was asked to assist with the

selection of new recordkeeper for the company's 401(k) plan covering management employees. This work was another specific project which was estimated to take approximately six months to complete. From August 1996 to March 1997, the day-to-day administration of the pension, 401(k) and benefit programs was being handled by Barbara Karakula, the Pension & Benefits Clerk. LP commented that this worked very well for both the company and herself, since at the time of LP's retirement, Ms. Karakula had been on the job for nine years, was well-versed in pension/benefits administration and capable of handling any situation which might arise. In March 1997 Ms. Karakula was replaced by someone who had no experience in the area and, consequently, LP found it necessary to train the new person and to get much more involved in the daily administration activities. In April 1997 Grand Trunk headquarters relocated to Troy, Michigan, and LP assisted with that move and then began reporting there to continue her consulting work. A work area and phone number were assigned to LP, who worked closely with the new clerk to assure the competent administration of the pension, 401(k), and other programs. While the new clerk was on medical leave in either 1998 or 1999, LP trained another clerk in this work. However, LP advised that because it is difficult to learn any job completely in such a short period of time, she herself took on a major portion of the work and was once again the source for employee questions and problems associated with the pension, 401(k), and benefits programs as she had been prior to her retirement. LP explained that as time went on and the new clerk began to rely more and more on LP's presence, LP found that not only was she doing the work which she had done prior to her retirement but also found that she was doing a large portion of the Pension & Benefits Clerk's work as well.

In the fall of 2000, another transition in the 401(k) recordkeeping was made and LP was a part of the committee headed up by the IC in Chicago that facilitated the transfer. In October 2000 the new clerk's job was abolished and the work was transferred to CN in Canada. While employees were directed to call a number in Moncton, New Brunswick, for any problems involving Grand Trunk's pension, 401(k), and benefit plans, approximately 95% of those questions were referred to LP because the person in Moncton had no prior training in any of these programs and was unfamiliar with the provisions of the plans. LP stated that at that point, not only was she performing the duties of her prior position as Manager of Benefits Administration but also the majority of the work of the Pension & Benefits Clerk as well. Calls concerning pension matters were being referred to Albert Lemieux, an employee of Mercer (CN's pension administrator in Montreal) but all of his calculations and correspondence in connection with Grand Trunk matters were checked and approved by LP for accuracy before a response was issued. As part of the transition process, in October 2000 LP stated that she had trained

Mr. Lemieux in Grand Trunk plan provisions along with the newly-hired pension plan administrator at the IC in Chicago, Ms. Ardyth Cutler, and continued to serve as a resource for Ms. Cutler until LP's relationship with CN ended in 2001.

LP's work was performed under several written contracts. LP entered into a contract with Star Executive Group, Inc., in July 1999, pursuant to which LP advises she performed services for Grand Trunk from July 1, 1999, through January 15, 2001. Prior to that time, stated that she had trained LP entered into a contract with Paladin Strategies, Ltd., in August 1996, pursuant to which LP performed services for Grand Trunk after that date. Effective January 15, 2001, LP entered into a contract with Canadian National Railway.

The Board's legal office advised the Grand Trunk Western Railroad of LP's claim for service and asked for a description of her work during the period from August 1996 through June 2001. A response was provided by Danielle G. Farley, Human Resources Advisor for Canadian National Railways. Ms. Farley advised that:

LP was employed by Star Executive Group and performed retiree benefit administration work for the former [Grand Trunk] property. From July 1999 through the end of her service, LP's work was regulated and reviewed by the CN Benefits Group located in the Chicago, Illinois office. LP worked with several people at the Company but did not have supervisory or performance management responsibilities for any CN employees in her consulting capacity.

Section 1(b) of the Railroad Retirement Act defines an "employee" to be any individual in the service of one or more (railroad) employers for compensation. Section 1(d) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation \* \* \*.

Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. §§ 3231(b) and (d)). While the regulations of the RRB generally merely restate this provision, it should be noted that section 203.3(b) thereof (20 CFR 203.3(b)) provides that the foregoing criteria apply irrespective of whether "the service is performed on a part-time basis \* \* \*."

As the above definitions would indicate, the determination of whether or not an individual performs service as an employee of a covered employer is a fact-based decision that can only be made after full consideration of all relevant facts. In considering whether the control test in paragraph (A) is met, the Board will consider criteria that are derived from the commonly recognized tests of employee-independent contractor status developed in the common law. In addition to those factors, in considering whether paragraphs (B) and/or (C) apply to an individual, we consider whether the individual is integrated into the employer's operations. The criteria utilized in an employee service determination are applied on a case-by-case basis, giving due consideration to the presence or absence of each element in reaching an appropriate conclusion with no single element being controlling. Because the holding in this type of determination is completely dependent upon the particular facts involved, each holding is limited to that set of facts and will not be automatically applied to any other case.

It appears from LP's description of her work that she was initially retained for specific projects of limited scope and duration. The Board finds that, from August 1996 through March 1997, LP's work was performed as a consultant and not as an employee. However, effective April 1997, the Board finds that LP was subject to the continuing authority of the Grand Trunk/CN to supervise and direct the manner in which she provided service. The evidence indicates that in March 1997, LP trained the successor to the former Pension & Benefits Clerk Barbara Karakula and became more involved in daily administration services. After Grand Trunk relocated to Troy, Michigan in April 1997, LP began to report to the new office and was assigned a work area and telephone number. LP trained another clerk in the same work in either 1998 or 1999. After work was transferred to CN in Canada in October 2000, almost 95% of the questions directed to a number in Moncton, New Brunswick were referred to LP for response. The evidence of record clearly demonstrates that LP was subject to the supervision and direction of the railroad, which not only provided her work space and a telephone but also consistently and continuously had pension questions routed to LP. Also, there is no indication that LP sought advice or guidance concerning the benefit or pension plans from anyone other than Grand Trunk/CN officers

or managers. LP's exhaustive description of the services she performed shows that she was performing employee service under section 1(d)(i)(A) of the Railroad Retirement Act.

Accordingly, service and compensation for LP may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr. (Concurring  
Opinion Attached)

Jerome F. Kever

**Concurring Opinion of  
V. M. Speakman, JR  
Employee Status Determination  
LP**

I concur with the decision in this case; however, I would add that even if LP were not found to be an employee under section 1(d)(i)(A) of the Railroad Retirement Act (control test), she would certainly be deemed an employee under 1(d)(i)(C) of that statute, since she clearly was performing personal services on the premises of a carrier and was integrated in to the carrier's operations.

Original signed by:

V. M. Speakman, Jr.  
Labor Member