

Employer Status Determination

South Orient Railroad Company, Inc. Rail Operators, Inc.

This is the decision of the Railroad Retirement Board regarding the status of South Orient Railroad Company, Inc. (SORC) and Rail Operators, Inc. (ROI) as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) has transferred the right of way and fixed assets line of approximately 381 to 386 miles of its rail in Texas to the South Orient Rural Rail Transportation District, an instrumentality of the State of Texas, which in turn leased them and granted an easement to SORC; the business and right to operate the rail line were transferred to SORC by the Santa Fe. According to ICC Finance Docket No. 32032, March 20, 1992, a notice of exemption was filed for a transaction in which Southern Pacific Transportation Company granted overhead trackage rights over approximately 11.4 miles of rail line to SORC. In a decision of August 26, 1992, ICC Finance Docket 31971, the ICC found that it did not have jurisdiction over the transfer of the right of way and fixed assets to the South Orient Rural Rail Transportation District, and directed the publication of SORC's notice of exemption.

According to letters of March 4 and September 4, 1992, from Ms. Valerie Walker, Administrative Assistant, ROI, that company was incorporated and began operations on January 3, 1992, and January 1, 1992, respectively, and:

* * * provides operational and administrative services by contract for railroads and request this service. Services provided by ROI management include[], but are not limited to, marketing, freight accounting, maintenance of way, mechanical maintenance of vehicles and locomotives, engineers, brakemen and administrative personnel. All personnel are employed by ROI and compensated by ROI. * * *

SORC has no employees; ROI runs the railroad operation on the rail line in question and provides all personnel. ROI currently provides services only to SORC. It does not appear that ROI filed a notice of exemption with the ICC or that the ICC has issued any decision pertaining to ROI. According to a copy of a letter from the Association of American Railroads, the rail line in question interchanges with the Santa Fe at San Angelo Junction, Texas, which, according to a letter from the Railway Labor Executives' Association quoting SORC's ICC Notice of Exemption and from an

ICC decision of January 14, 1992, is the northern end of the rail line. The southern end of the line is at the Mexican border.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

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

Section 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. S 3231).

SORC has by contract provided for ROI to operate the line and does not do so itself. SORC has, however, been granted trackage rights over a portion of the line and that transaction has been approved by the ICC. In Board Order 89-74 the Board held that a lessor employer, which had sold all of its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under section 1(a)(1)(i) of the Railroad Retirement Act. See appeal of Board of Trustees of the Galveston Wharves, B.O. 89-74, April 24, 1989. The rationale of Board Order 89-74, where a company has transferred title to its assets, applies in the instant case where SORC has contracted for operation of the line by ROI and itself has no employees with whom to operate the rail assets in any case. Accordingly, the Board holds that SORC is not an employer under the Acts.

ROI has not obtained ICC authority for operation of the rail line or applied for an exemption from that authority. However, that fact is not determinative of coverage under the Acts administered by the Board. The Railroad Retirement Act covers "substantially all those organizations which are intimately related to the transportation of passengers or property by railroad in the United States. S. Rep. No. 818, 75th Cong. 1st Sess. 4 (1937)." Standard Office Bldg. Corp. v. U.S., 819 F. 2d 1371, 1376 (7th Cir. 1987). The evidence of record shows that ROI operates trains over approximately 400 miles of SORC's track and that it engages in no other business.

There is no question but that ROI transports property by railroad in interstate commerce in the United States. Accordingly, ROI is

a rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts from the date on which it began to operate and compensate its employees, January 1, 1992.

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