

**Employer Status Determination
Butte/Anaconda Historical Park and Railroad Company**

This is the decision of the Railroad Retirement Board regarding the status of Butte/Anaconda Historical Park and Railroad Company as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

According to information submitted by Rick Griffith, President of Butte/Anaconda Historical Park and Railroad Company ("Butte/ Anaconda"), the railroad has operated since May 1987, running on a seasonal basis from Memorial Day to Labor Day of each year. The railroad hires college students at a rate between \$5.00 and \$6.00 per hour to drive an old electric line repair vehicle that runs on gas. The employees also narrate the tour, which is five miles in length, running from Rocker, Montana to Butte, Montana. Butte/Anaconda "is a non-profit corporation set up to develop an interpretation of the past mining activity in the Butte area." Butte/Anaconda has been set up to operate a tourist train with annual revenues of \$18,000 and carries between 4,000 and 9,000 passengers annually. Butte/Anaconda does not interchange with any other railroad; however, a switch connects it to the Rarus Railway Company's line of track.¹ Butte/Anaconda has common carrier rights over the tracks, but it has an agreement with Rarus Railway Company that it will contract with Rarus should any need exist.² As of June 1992 there has been no commercial traffic other than the tourist car, which holds twenty-five passengers.

Section 1 of the Railroad Retirement Act (RRA) provides in pertinent part that:

(a)(1) The term 'employer' shall include

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

(ii) any company which is directly or indirectly owned or controlled by, or under

¹Rarus Railway Company is an employer covered under the Acts (BA-3649), with service creditable from May 1, 1985. The file contains no indication that there is any corporate connection between Butte/Anaconda and Rarus.

²See Notice of Exemption for Butte/Anaconda in ICC finance docket No. 31982, decided February 5, 1992, wherein it is stated that Butte/Anaconda had a trackage rights agreement with Rarus under which Rarus was to operate Butte/Anaconda's 11.76 miles of rail line, apparently including the five-mile line in question here, subject to Rarus obtaining the necessary authority to do so from the ICC. As of the present date no such authority has been sought or obtained.

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 * * *" (45 U.S.C. § 231(a)(1)(i) and (ii)).

Section 1 of the Railroad Unemployment Insurance Act (RUIA) contains essentially the same definitions.

Section 10501 of the Interstate Commerce Act sets forth the general jurisdiction of the Interstate Commerce Commission (ICC) over transportation by rail. Section 10501(b) provides in pertinent part that:

(b) The Commission does not have jurisdiction under subsection (a) of this section over

(1) the transportation of passengers or property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this subtitle." (49 U.S.C. § 10501(b)(1)).

The seasonal rail service provided by Butte/Anaconda may be characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are transported solely within one state, under section 10501(b)(1) above, Butte/Anaconda would not be subject to ICC jurisdiction and would therefore also not fall within the definition of "employer" set out in section 1(a)(1)(i) of the RRA. It is therefore concluded that Butte/Anaconda Historical Park and Railroad Company is not an employer under the Acts.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever