

EMPLOYER STATUS DETERMINATION

Wisconsin Trolley Museum d/b/a
East Troy Electric Railroad

This is the determination of the Railroad Retirement Board concerning the status of Wisconsin Trolley Museum d/b/a East Troy Electric Railroad (WTM) (BA No. 3652) 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).

WTM was formed as a museum corporation in 1975. Over the years, WTM moved to a number of different locations, starting in Germantown, Wisconsin, moving next to North Prairie, Wisconsin, and subsequently moving to East Troy. In East Troy, WTM was able to operate museum trolley demonstration rides and became a licensed operator of an existing freight railroad (formerly operated by the Municipality of East Troy (BA No. 5218)).

In Legal Opinion L-86-139, issued on November 21, 1986, the Board's Deputy General Counsel held that WTM d/b/a East Troy Electric Railroad became an employer under the Acts effective May 1, 1985, the date that it began railroad freight operations. Mr. Paul Averdung, the President of WTM, has now requested that its museum operations be segregated from its freight operations, and has provided information in support of that request.

Mr. Averdung stated that WTM has separate accounts for the museum operation and the freight operation and also does all of its correspondence and billing on separate stationery. The museum operation includes on and off site seminars, a gift shop, historic displays, trolley car restoration, educational videos, demonstration trolley rides, demonstration dinner trips, preservation of buildings, and preservation of the trolley railroad plant. Tickets for the excursion railroad are not sold in connection with any passenger railroad. Authority was not sought from the Interstate Commerce Commission for operation of the excursion railroad because WTM provides only demonstration rides.

WTM's freight operations consist of occasional car movement (5 to 30 cars per year) to East Troy.

Section l(a)(1) of the RRA defines the term "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

Wisconsin Trolley Museum
d/b/a East Troy Electric Railroad

(ii) any company which directly or indirectly owned or controlled by, or under common control with one or more employers as defined in paragraph (i) of the subdivision and which operates any equipment or facility or performs any service ... in connection with the transportation of passengers or property by railroad

Section 1 of the RUIA contains essentially the same definition.

Section 202.3 of the Board's regulations provides that:

(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:

(1) The primary purpose of the company or person on and since the date it was established;

(2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;

3) The amount of its carrier business and the ratio of such business to its entire business;

4) Whether its carrier business is a separate and distinct enterprise. [20 CFR §202.3(a)].

In this case, WTM was established as a museum corporation in 1975, some ten years prior to the time that it took over the small freight operation of the Municipality of East Troy. The principal business of WTM has always been its museum operation, which, since 1985, has included the operation of an excursion railroad. The excursion railroad operation is not subject to the jurisdiction of the Interstate Commerce Commission, since it does not transport passengers from a place in one State to a place in another State, but instead provides excursion service between two points entirely within one State. (See 49 U.S.C. 510501(b)(1).)

The freight operation is a very small portion of WTM's business. In earlier correspondence, Mr. Averdung stated that the museum provides 80% of WTM's revenue. In 1985, WTM had \$3,500 in revenue from its freight operation, \$10,000 from its gift shop, and \$6,500 from its trolley rides

Wisconsin Trolley Museum d/b/a
East Troy Electric Railroad

(the excursion service). In 1986, it had \$4,700 in freight revenue, \$12,000 from the gift shop, and \$15,500 from the trolley rides. The freight operation is separate and distinct from the excursion service, even down to the use of separate stationery for the two portions of WTM's business.

Based upon the information summarized above, it is determined that segregation under section 202.3 of the Board's regulations should be applied to the freight operations of WTM. Thus, WTM is a carrier employer under the RRA and the RUIA only with respect to its freight operations, beginning with the date that it began those freight operations, on May 1, 1985.

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