

EMPLOYER STATUS DETERMINATION

Tarantula Corporation

This is the determination of the Railroad Retirement Board concerning the status of Tarantula Corporation (TC) 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). TC has not previously been held to be an employer under the Acts.

The evidence shows that TC is a holding company incorporated on November 10, 1986. TC owns three rail carrier employers: Fort Worth and Western Railroad Company (BA No.2861), Fort Worth and Dallas Railroad Company (BA No.2862), and Fort Worth and Dallas Belt Railroad Company (BA No.5819). According to the information provided, TC has no employees.

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

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

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad. [45 U.S.C. §231(a)(1)(i) and (ii)].

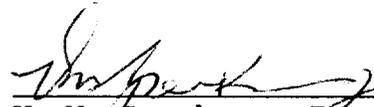
Section 1 of the RUIA (45 U.S.C. §351) and section 3231 of the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §3231) contain essentially the same definition.

TC is not a carrier within the meaning of section 1(a)(1) quoted above. Rather, it is a holding company that owns three such carriers. A recent decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the RRTA held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of §3231. Union Pacific Corporation v. United States, 5 F.3d 523 (Fed. Cir. 1993).

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The facts in the Union Pacific case are indistinguishable from those presented by TC. Accordingly, a majority of the Board finds that Tarantula Corporation is not now and has never been an employer covered by the RRA and the RUIA because it is not under common control with its rail carrier subsidiaries.


Glen L. Bower


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


Jerome F. Kever

Attachment

CONCURRING OPINION BY V. M. SPEAKMAN, JR.
ON THE EMPLOYEE STATUS DETERMINATION OF
TARANTULA CORPORATION

I agree with the finding that Tarantula Corp. (TC) is not an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts (the Acts), not for the reason stated, but because it is not a carrier within the meaning of the Acts and does not perform any service in connection with the transportation of passengers or property by railroad.

I do not concur with the decision in Union Pacific Corp. v. United States, which held that a parent corporation which owns a rail carrier subsidiary is not under common control with the subsidiary. Consequently, I feel that TC is under common control.



V. M. Speakman, Jr.