

BCD 1999-39.1

BA# 9532

EMPLOYER STATUS DETERMINATION

CSX Payroll Services, Inc.
CSX Rail Payroll Services, Inc.
CSX Non-Rail Payroll Services, Inc.

NOV 12 1999

This is the determination of the Railroad Retirement Board concerning the status of CSX Payroll Services, Inc. (CSX-PS), CSX Rail Payroll Services, Inc. (CSX-Rail), and CSX Non-Rail Payroll Services, Inc. (CSX-Non-Rail) as employers 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).

CSX-PS is a subsidiary of CSX Technology, Inc. which, in turn, is a subsidiary of CSX Corporation (CSX). CSX Corporation is the parent company of CSX Transportation Inc. (CSXT), a covered employer under the Acts (BA No. 1524). CSX-Rail and CSX-Non-Rail are subsidiaries of CSX-PS. Accordingly, these three companies are under common control with CSX Transportation, Inc.

CSX-PS operates and maintains the "People Soft" program, a novel payroll software program. CSX-PS functions are almost exclusively devoted to the computer processing of weekly, semi-monthly and monthly payroll runs for the various companies in the CSX affiliated group. CSX-PS is an end processor of the payroll data. The various affiliated companies continue to assemble, gather, reconfigure and organize payroll data. All actions necessary to manipulate payroll data into a generic form usable by CSX-PS are performed by the affiliate company. In a letter dated January 26, 1999, Scott J. Rynearson, Tax Counsel for CSX, reported that CSX-PS has 16 employees.

CSX-Rail serves as pay agent for all employees of CSX Corporation-related companies covered under the Railroad Retirement Tax Act, Railroad Retirement Act, and Railroad Unemployment Insurance Act. It has no employees but leases employees from these affiliates.

CSX Non-Rail acts as pay agent for all employees of CSX Corporation-related companies covered under the Federal Insurance Contributions and Social Security Acts. The three companies were formed May 7, 1997.

Section 1 of the Railroad Retirement Act defines the term "employer" to include:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of Title 49, United States Code;

(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)].

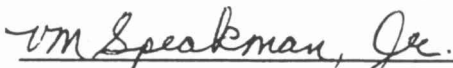
Section 1 of the Railroad Unemployment Insurance Act contains essentially the same definition. [45 U.S.C. § 351].

All three companies at issue are under common control with CSX Transportation, an employer under the Acts. CSX Non-Rail Payroll Services performs no services for companies covered under the Acts and, accordingly, is not an employer. CSX Rail Payroll Services serves as pay agent for all employees of CSX Corporation-related companies covered under the RRA and RUIA, including CSXT. The Board finds that CSX-Rail performs services in connection with railroad transportation and is therefore an employer under the RRA and RUIA.

The situation of CSX Payroll Services is analogous to that of CSX Technology, Inc., which a majority of the Board, Labor Member dissenting, found not to be an employer (B.C.D. 97-31). CSX Technology provided holding company management services and data processing services for two subsidiaries. A majority of the Board found that these services, provided to CSX Technology's subsidiaries, did not constitute services in connection with rail transportation. In this case, CSX Payroll Services operates and maintains payroll software for CSX Corporation subsidiaries. It does not, however, provide service directly for an employer covered by the RRA and RUIA. Instead, each individual CSX affiliate gathers, assembles, and organizes its own payroll data. CSX Rail and CSX Non-Rail act as pay agents. CSX-PS's operation and maintenance of the payroll software system is analogous to the data processing performed by CSX Technology. A majority of the Board therefore finds that CSX-PS does not perform service in connection with railroad transportation within the definition of an employer under the RRA and RUIA and is thus not an employer under those Acts.

The evidence of record establishes that CSX Rail Payroll Services is under common control with a rail carrier operating in interstate commerce and is providing services in connection with railroad transportation under the Acts. Accordingly, it is determined that CSX Rail Payroll Services became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act effective May 7, 1997. For the reasons described above, the Board finds that CSX Non-Rail Payroll Services is not an employer under the Acts.


Cherryl T. Thomas


V. M. Speakman, Jr. (Dissenting
in part)


Jerome F. Kever