

Employer Status Determination AnSCO Investment Company

This is the decision of the Railroad Retirement Board regarding the status of AnSCO Investment Company (AIC) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In a letter dated May 23, 1991, Mr. Craig P. Meis, Vice President and General Manager, advised that AIC, which was incorporated October 7, 1987:

does not perform any services to DRGWR [Denver & Rio Grande Western Railroad Company]. AIC functions as a tour/travel company organizing rail travel for the public on a scheduled basis during the ski season and at other times on a charter basis. In this capacity, AIC provides for and manages the Ski Train over DRGWR lines with DRGWR personnel and private rail cars over the DRGWR and other railroads as part of an Amtrak train. AIC business with DRGWR is in accordance with the agreement referred to in #3 below [this agreement is a contract between AIC and Amtrak]¹. AIC business with Amtrak for the movement of private rail cars is pursuant to published tariffs. All rail cars formerly owned by AIC are now provided by AIC under a sale/leaseback transaction with GE Capital. AIC does not own any railroad equipment, cars, track or other railroad property of any kind.

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AIC contracts with DRGWR for track, locomotives, train crew and maintenance services. DRGWR hauls AIC equipment (rail cars) over DRGWR lines pursuant to the contract between AIC and DRGWR. AIC is a marketing, management company offering recreational, excursion travel to the public.

In that letter Mr. Meis stated that "AIC does not provide any service to DRGWR. * * * DRGWR provides maintenance and repair service for AIC cars. They also provide train crews and locomotives for AIC trips."

¹ This contract specifically states that "ANSCO [AIC] will operate two round trip ski trains every weekend from Denver to Winter Park, Colorado for the months of January through March and possibly the first two weekends of April 1988."

In a letter dated December 27, 1990, Mr. Paul B. Kingsolver, Director of Personnel-Labor Relations of DRGWR, stated that "DRGWR provides track, locomotives, train crews and maintenance and report services, and hauls AI equipment over DRGWR lines pursuant to the contract between DRGWR and AI. AI acts as a packager of recreational-excursion tours offered the public, which tours will use its equipment.

In his letter of October 3, 1991, Mr. Meis stated that "AnSCO employees are responsible for all administrative and managerial duties of the Ski Train" including the following: financial, marketing/advertising, public relations - customer service, ticketing, risk management, and strategic planning. AnSCO employees "perform similar tasks for private rail car chartering and various special projects." Mr. Meis states that the Ski Train operates scheduled service from December to April from Denver to Winter Park, Colorado, and that charters have also been run from Denver to Glenwood Springs, Colorado. He further states that the Ski Train does not operate in interstate commerce and does not interchange with any rail carrier operating in interstate commerce, and that Ski Train tickets are sold by AIC "and/or authorized tickets agents and are not sold as part of an Amtrak or DRGWR ticket. Neither Amtrak nor DRGWR have [sic] ever sold tickets for [AIC]."

In his letter on April 20, 1993, Mr. Meis stated that the ski train involved 50 percent of the employee time of AIC and produced 70 percent of the revenues; chartering (private cars), 35 percent and 20 percent; and "Other (film promotion, etc.), 15 percent and 10 percent."

Mr. Meis advises that DRGWR, an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts, is a wholly owned subsidiary of Rio Grande Holding, Inc., which in turn is a wholly owned subsidiary of Rio Grande Industries, Inc.² The Anschutz Corporation owns 71.25 percent of the common stock of Rio Grande Industries, Inc.; AIC is wholly owned by the Anschutz Corporation.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," to include

- (i) any express company, sleeping-car company, and

² Rio Grande Industries, Inc. became Southern Pacific Rail Corporation April 30, 1993.

carrier by railroad, subject to part I of the Interstate Commerce Act * * *.

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

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. § 1501(b)(1)].

The rail service provided by AIC 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 AIC 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 Railroad Retirement Act. Therefore AIC is not a carrier by railroad.

The Railroad Retirement Act and the Railroad Unemployment Insurance Act also define the term "employer" to include:

(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 * * *.

A virtually identical definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Thus, if a company does not perform a "service in connection with" rail transportation, the "control" issue need not be resolved.

There is no evidence that AIC provides any service in connection with rail transportation to DRGWR in connection with that operation. Rather, the evidence shows that AIC operates over the lines of DRGWR, a carrier which provides interstate freight service in connection with rail transportation, solely to provide public passenger ski tours within one state using its own rail cars. Because AIC does not perform a service in connection with rail transportation, the Board finds that it is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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