

SEP 28 2006

EMPLOYER STATUS DETERMINATION
Sierra Entertainment
Mendocino Railway

This is the determination of the Railroad Retirement Board concerning the status of Sierra Entertainment and Mendocino Railway, as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Sierra Entertainment and Mendocino Railway are owned and controlled by Sierra Railroad Company, an employer under the Acts (B.A. No. 2774) and are affiliated with Midland Railroad Enterprises Corporation, also an employer under the Acts (B.A. No. 9750).¹

Information regarding these companies was provided by Thomas Lawrence III, Weiner Brodsky Sidman Kider PC, outside counsel for Sierra Railroad Company. Sierra Entertainment was created and began operations on January 1, 2003. It operates dinner and brunch trains and excursion trains over the lines of its common carrier affiliates within California pursuant to an operating agreement. It also provides trains for use in movies, television, and commercials. Its excursion trains include (1) the Skunk Train which operates a round-trip excursion train from Fort Bragg to Northspur, and from Willits to Crowley (Northspur and Crowley are turning points); (2) the Sacramento RiverTrain which operates a round-trip excursion train from Woodland, California, to a turning point; and (3) the Oakdale Dinner Train which operates a round-trip dinner/excursion train from Oakdale, California, to a turning point 14 miles out. Sierra Entertainment owns its own equipment and employs its own staff, but does not own any rail lines.

Mendocino was created in 2004 to acquire the assets of the former California Western Railroad (a covered employer under the Acts; B.A. No. 2782), a 40-mile rail line in Mendocino County². The acquisition was authorized by the Surface Transportation Board in a decision dated April 8, 2004 (Finance Docket No. 34465). Mendocino's line runs between Fort Bragg and Willits, California, and connects to another railway line over which there has been no service for approximately ten years. Structural problems and bridge problems on the line will prevent service for some time to come. Since Mendocino Railway's only access to the railroad system is over this line, that access is currently unusable.

¹ Midland is a subsidiary of Sierra Railroad Company.

² CWRR, Inc., d/b/a California Western Railroad, was terminated as an employer effective September 30, 2003 (B.C.D. 04-40).

Mendocino's ability to perform common carrier service is thus limited to the movement of goods between points on its own line, a service it does not perform.

Section 1(a)(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 * * *.

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 Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

* * * transportation in the United States between a place in –

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The rail service provided by Sierra Entertainment 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(a)(2)(A), above, Sierra Entertainment would not be subject to Surface Transportation Board 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 Sierra Entertainment 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)).

Section 202.4 of the Board's regulations (20 CFR 202.4) defines "control" as follows:

A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines "common control" as follows:

A company or person is under common control with a carrier, whenever the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

Sierra Entertainment is under common control with a railroad employer by reason of its being owned by Sierra Railroad, which also owns Midland Railroad Enterprises Corporation, a covered employer under the Acts. Therefore, if Sierra Entertainment provides a service in connection with the transportation of passengers or property by railroad it is an employer under the Acts. Section 202.7 of the regulations (20 CFR 202.7) defines a service as being in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations.

There is no evidence that Sierra Entertainment provides any service to Midland. Rather, the evidence shows that Sierra Entertainment operates solely to provide public passenger excursion tours within one state. Because Sierra Entertainment 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.

Since Mendocino reportedly does not and cannot now operate in interstate commerce, the Board finds that it is not currently an employer under the Acts. If Mendocino commences operations, the Board will revisit this decision.

Original signed by:

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