

## **Employee Service Determination**

G.L.B.

FEB 11 2002

This is the decision of the Railroad Retirement Board regarding whether the services performed by G.L.B. for the Utah Railway Company constituted employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts. The Utah Railway is a covered employer under those Acts (B.A. No. 2746).

The Utah Railway is the parent of the Salt Lake City Southern Railroad Company, a covered employer under the Acts from April 1, 1993, until October 18, 1999 (B.A. No. 5730), and a subsidiary of Arava Natural Resources Company, Inc., which in turn is owned by Mueller Industries, Inc. G.L.B. is the President and Chief Operating Officer of the Utah Railway and the Salt Lake City Southern. G.L.B. was not reported as an employee of either railroad. G.L.B. performs the following services for the Utah Railway: inspects locomotives for purchase and lease; approves locomotive repair and maintenance agreements; participates in union management meetings; meets with customers and suppliers to negotiate shipping contracts and resolve trackage and switching billing disputes; hires and discharges railroad employees; conducts employee salary negotiations, as well as disciplinary and arbitration hearings; approves professional service contracts; and executes instruments and documents including checks, notes, mortgages, deeds, security agreements, and contracts. G.L.B. is also the president, and, in some cases, a director, of twelve natural resource and mining companies. He estimates that he spends between 25-50 percent of his time providing managerial services to the Utah Railway. Utah Railway pays a monthly management fee to Arava, which includes G.L.B.'s salary.

Section 1(b) of the Railroad Retirement Act and section 1(d)(i) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation.

G.L.B.

Section 1(d)(1) of the Railroad Retirement Act further defines an individual as "in the service of an employer" when:

(i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and

(ii) he renders such service for compensation \* \* \*.

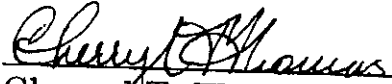
Section 1(e) of the Railroad Unemployment Insurance Act contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. § 3231 (b) and (d)). While the regulations of the Board generally merely restate this provision, it should be noted that section 203.3(b) thereof (20 CFR 203.3(b)) provides that the foregoing criteria apply irrespective of whether "the service is performed on a part-time basis \* \* \*," and that section 203.2 (20 CFR 203.2) provides in pertinent part that "An individual shall be an employee whenever \* \* \* (d) he is an officer of an employer."

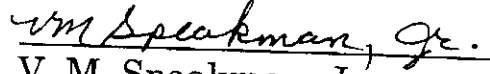
Under section 211.16(a) of the Board's regulations, the period of time within which compensation may be reported is limited to four years after the date on which such compensation is required to be reported to the Board. The four-year rule is subject to certain exceptions including the case "Where the earnings were erroneously reported to the Social Security Administration in the good faith belief by the employer or employee that such earnings were not covered under the Railroad

G.L.B.

Retirement Act \* \* \* (section 211.16(b)(ii)). However, no employee may be credited with service months or tier II compensation beyond the four-year period unless the appropriate railroad retirement taxes have been paid (section 211.16(c)).

G.L.B. is an officer of both the Utah Railway Company and the Salt Lake City Southern Railroad Company. Accordingly, it is the decision of the Board that services for Utah Railway are being performed as an employee, and that services for Salt Lake City Southern performed during the period April 1, 1993, until October 18, 1999 were performed as an employee. Consequently, such service is creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts insofar as is permitted by section 211.16.

  
Cherry T. Thomas

  
V. M. Speakman, Jr.

  
Jerome F. Kever