

**Employer Status Determination
Temple-Inland, Inc.**

This is the decision of the Railroad Retirement Board regarding the status of Temple-Inland, Inc. (TIN) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. Information concerning TIN has been provided by Mr. David M. Grimm, who is counsel for TIN.

TIN has approximately 20 employees and began operations in August 1983. TIN is a holding company; it is the parent company of Inland Container Corporation, which in turn is the parent company of Inland-Orange, Inc. Inland-Orange, Inc. owns Sabine River & Northern Railroad Company, a rail carrier employer under the Acts (B.A. Number 2848). TIN is also the parent company of Temple Inland Forest Products Corporation, which in January 1992 acquired all of the common stock of the Texas South-Eastern Railroad Company, also a rail carrier employer under the Acts (B.A. Number 2827). Mr. Grimm advises that TIN:

* * * has interests in container and containerboard, bleached paperboard, building products, timber and timberlands, and financial services. TIN's container and containerboard operations are vertically integrated and consist of three linerboard mills, three corrugating medium mills, and 39 box plants. In addition, subsidiaries of TIN manufacture bleached pulp and paperboard and a wide range of building products including lumber, plywood, particleboard, gypsum wallboard, and fiberboard. Forest resources include approximately 1.8 million acres of timberland in Texas, Louisiana, Georgia and Alabama, of which approximately 95,000 acres are leased. TIN's financial service operations consist of consumer savings bank activities, mortgage banking, real estate development, and insurance brokerage. *

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The definition of an employer contained in section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) reads in part as follows:

The term 'employer' shall include-

(i) any express company, sleeping car company, and carrier by railroad, subject to [the Interstate Commerce Act];

(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

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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 * * *.

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

There is no evidence that TIN is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether TIN is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it provides "service in connection with" railroad transportation and if it is owned by or under common control with a rail carrier employer. If it fails to meet either criterion, it is not a covered employer within section 1(a)(1)(ii).

The evidence here shows that TIN does not perform any service in connection with railroad transportation--either for its own rail subsidiaries or for any other carriers. TIN is, therefore, not an employer within section 1(a)(1)(ii), and the Board does not need to address the issue of whether TIN, the parent, is "under common control" with its subsidiary railroad. The Board notes that this issue is involved in a recent tax case involving identical language in the Railroad Retirement Tax Act. In that case, the Claims Court held that a parent company is not under common control with its subsidiary. Union Pacific Corporation v. United States, 26 Cl. Ct. 739 (1992).

It is the determination of the Board that TIN is not an employer under the Acts.

Glen L. Bower

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