EMPLOYER STATUS DETERMINATION
Walkersville Southern Railroad, Inc. (WSR)

JAN 1 9 2000

This is a determination of the Railroad Retirement Board concerning the continued status of Walkersville Southern Railroad, Inc. (WSR) (BA No. 2357) as an employer 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.)

WSR is a class three line-haul railroad which operates a "turn of the century" small-town excursion railroad between Walkersville and Frederick, Maryland. In B.C.D. 94-30, issued March 7, 1994, the Board held that WSR was operating a railroad in interstate commerce in the United States and accordingly, became a rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective November 12, 1993, the date it reported it began operations. At that time, WSR's plans included developing freight business and interchanging with the Maryland Midland Railway (MMR).

A recent audit revealed that WSR's original plans were never realized. According to WSR's President, Gene Tucker, WSR does not presently haul freight, nor does it plan to do so in the future. It has only an ancillary relationship with MMR, as the two railroads have an agreement whereby MMR may use WSR's tracks for the purpose of transporting grain for Cargill, a grain operator and storage facility located across the street from the WSR station[1]. The agreement provides that WSR is restricted from doing business with Cargill.

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 [45 U.S.C. §231(a)(1)(i)].

Section 1 of the RUIA contains essentially the same definition.

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board (STB) has jurisdiction over transportation by rail carrier:

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[1]The evidence indicates the track is actually owned by the state of Maryland. See ICC Finance Docket No. 32329 decided September 23, 1993.

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> ...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 evidence shows WSR operates an excursion railroad between Walkersville and Frederick, Maryland. WSR does not conduct freight operations, nor does it operate any passenger service which connects with any other railroad. It operates only on a seasonal basis, during the months of May through October, as well as some operations around the December holidays.

The Railroad Retirement Board's regulations provide that the employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status. (20 CFR §202.11). The information summarized above establishes that WSR is not part of the interstate rail network. As a result, it is, according to the statutory language quoted previously, not subject to STB jurisdiction. Consequently, it also is not within the carrier definition of "employer" under the RRA and the RUIA.

The Board finds that effective with the close of business on April 30, 1999, the Walkersville Southern Railroad, Inc., ceased being a covered employer under section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act. April 30, 1999 is the last day of the month in which the Railroad Retirement Board first became aware that WSR no longer intended to conduct freight operations.

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