B.C.D. 00-43

EMPLOYER STATUS DETERMINATION

OCT 31 2000

North Carolina Ports Railway Commission

This is the determination of the Railroad Retirement Board concerning the status of North Carolina Ports Railway Commission (Railway Commission)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.).

The evidence is that the Railway Commission was organized in 1979 as an agency of the State of North Carolina to operate, maintain and control all railway equipment and railway operations transferred to it by the State Ports Authority. See General Statutes of North Carolina Chapter 143B, Part 11 (N.C. Gen. Stat. § 143B-469 - 143B-469.3). The Railway Commission was previously determined to be a rail carrier employer under the Acts during the period July 1, 1980 through November 2, 1988. See Legal Opinion L-81-4. Covered employer status was determined to have ended in 1988 as a result of a series of leases whereby the Railway Commission assigned all rail operations to private rail carriers and became merely a means through which North Carolina held title to the rail lines. See Legal Opinion L-89-129.

By letter dated March 7, 2000, Mr. William C. Taylor, General Manager of the North Carolina Ports Railway Commission (Railway Commission) reported to Chief of the Board's Audit and Compliance Section that the Surface Transportation Board approved the acquisition by the Railway Commission of the lease and operation of approximately 3 miles of rail line between Morehead City and Beaufort, North Carolina from the Beaufort and Morehead Railway (B&M Railway)[1]. The Railway Commission intended

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[1] The Beaufort and Morehead Railway (B&M Railway) was held to be an employer under the Acts effective February 4, 1991, when it assumed operation of the rail line. Under that arrangement, ownership of the rail line remained with the Beaufort and Morehead Railroad (B&M Railroad). See B.C.D. 95-46. The B&M Railroad itself was owned by the Railway Commission. On April 1, 1997, the Railway Commission transferred ownership of the B&M Railroad and its assets to the North Carolina Department of Transportation (NC Dot). One year later, on April 1, 1998, B&M Railroad merged with North Carolina Railroad (BA No. 8055) as part of a transaction whereby NC DoT gained 100 percent control of the North Carolina Railroad. The evidence is thus that the Beaufort-Morehead City rail line is currently owned by the North Carolina Railroad.

to do business over the line as Beaufort and Morehead Railway. See: North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway-Acquisition and Operation Exemption-Beaufort & Morehead Railway, Inc., STB Finance Docket No. 33826, 64 Fed. Reg. 67619, December 2, 1999. Mr. Taylor further stated that the Railway Commission began operations over the line January 1, 2000.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (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.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), (26 U.S.C. § 3231).

The evidence of record establishes that by assuming the rail carrier operations formerly conducted by B&M Railway, the Railway Commission has again become a carrier operating in interstate commerce. Accordingly, it is determined that North Carolina Ports Railway Commission is an employer within the meaning of 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 as of January 1, 2000, the date as of which it commenced operation of the Beaufort-Morehead City rail line.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever