B.C.D. 00-56

DEC 06 2000

EMPLOYER STATUS DETERMINATION
Motive Rail, Inc. (MRI)

This is a determination of the Railroad Retirement Board concerning the status of Motive Rail, Inc. as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA). MRI was formed as a result of a split-up in 1998 of a family business previously known as Respondek Railroad Corporation.

Respondek Railroad Corporation (RRC), contacted the Board's Office of Audit and Compliance in 1999 regarding a change in its business operations. Terry L. Respondek, owner and Chief Executive Officer of RRC, stated that he and his brother, Jerry Respondek, together no longer operate SEMO Port Railroad, Inc. (SEMO) in Scott City, Missouri. Jerry Respondek took over the entire operation at the Semo Port and now operates his own private company under the name Motive Rail, Inc. The Board previously determined in B. C. D. 96-13.1 and 96-13 respectively, that RRC was not a rail carrier employer under the Acts and further, that service performed by employees of RRC, under contract with the SEMO Port Railroad, Inc. (SEMO) (B. A. No. 2870), was creditable service as employee service for SEMO. In B.C.D. No. 00-38, the Board held that RRC became a rail carrier employer under the RRA and the RUIA effective August 3, 1999, since it operates as a rail carrier subject to the jurisdiction of the Surface Transportation Board.

Information regarding MRI was furnished by Jerry L. Respondek , President and Chief Executive Officer of MRI. According to Mr. Respondek, rail contractor operations have been transferred from Respondek Railroad Corporation (RRC) to MRI. Mr. Respondek stated that MRI, under contract to Semo Port Railroad (SEMO), performs "any and all rail transportation" on SEMO Port Railroad. According to Mr. Respondek, "services include delivery and pick up of rail cars to and from both Union Pacific Railroad and Burlington Northern Railroad."

Information regarding SEMO was provided by Pamela K. McNamara, Manager of Finance and Administration for Southeast Missouri Regional Port Authority (SMRPA). According to Ms. McNamara, SEMO is a wholly owned subsidiary of SMRPA and does not have any employees. Ms. McNamara stated that SEMO contracts its rail freight service to MRI. Formerly, SEMO contracted with RRC, according to Ms. McNamara. However, due to the split of the family business, MRI operates SEMO's rail line pursuant to an Assignment of Rail Freight Service Contract signed on August 27, 1998 by SEMO, RRC, and MRI.

MRI interchanges with the Union Pacific Railroad Company (B. A. No. 1713) and the Burlington Northern Santa Fe Railroad (B. A. No. 1621).

Section 1(a)(1) of the Railroad Retirement Act (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.

Section 1 of the RUIA contains essentially the same definition.

The evidence of record establishes that MRI operates as a rail carrier subject to the jurisdiction of the Surface Transportation Board. Accordingly, it is determined that Motive Rail, Inc. became 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 effective August 27, 1998, the date of the Assignment of Rail Freight Service Contract.

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