B.C.D. 00-65

DEC 2 1 2000

EMPLOYER STATUS DETERMINATION
Wisconsin Chicago Link, Ltd. (WCLL)

This is the determination of the Railroad Retirement Board concerning the status of Wisconsin Chicago Link, Ltd. (WCLL) 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).

In Surface Transportation Board (STB) Finance Docket No. 33825, decided on November 29, 1999, WCLL filed a notice of exemption to acquire a rail line of Wisconsin Central Ltd. (WCL) (B. A. No. 2633) extending between Forest Park and Franklin Park, Illinois, a distance of approximately 4.1 miles (the "Forest Park Line"). According to the STB decision, WCL retained trackage rights on the Forest Park Line. This notice of exemption also related to Finance Docket No. 33811 in which Wisconsin Central Transportation Corporation (WCTC) sought an exemption to continue in control of WCLL after WCLL acquired the Forest Park Line.

Additionally, in STB Finance Docket No. 33831, decided February 3, 2000, WCLL filed a notice of exemption to lease from Pennsylvania Lines LLC (PRR) approximately 1.9 miles of rail line (the Panhandle line) of the former Pittsburgh Cincinnati, Chicago & St. Louis Railroad Company (PCC&StL) in Chicago, Cook County, Illinois. The Panhandle line extends between (1) a connection with CSXT via the Altenheim Subdivision of the Baltimore and Ohio Chicago Terminal Railroad Company at Ogden Junction near Rockwell Street (approximately PCC&StL milepost 309.8), and (2) a point (approximately PCC&StL milepost 307.9) 600 feet north of the north bank of the Chicago Sanitary and Ship Canal, near the Ash Street Interlock. According to the STB decision, WCLL also would obtain incidental, overhead trackage rights extending south from PCC&StL milepost 307.9, a distance of approximately 2 miles, to present or future connections with rail lines of Norfolk Southern (NS) (B. A. No. 1525), Canadian National/Grand Trunk Western Railroad, Inc. (CNGTW) (B. A. No. 1103), Illinois Central Railroad Company (ICRR) (B. A. No. 1516), Chicago, Central & Pacific Railroad Company(CCPC) (B. A. No. 2630) and the Burlington Northern and Sante Fe Railway Company (BNSF) (B. A. No. 1621). The Panhandle Line was out of service at the time of the STB decision. However, according to the STB decision, WCLL intends to reconstruct the line and add additional capacity. Additionally, the decision stated that initial operations on the line would be conducted by NS, CSXT and WCL pursuant to trackage rights.

Information regarding WCLL was furnished by Mr. Michael J. Barron, Jr., General Attorney for Wisconsin Central System. Mr. Barron stated that WCLL is a wholly-owned subsidiary of WCTC. The Chief Executive Officer of WCLL

Wisconsin Chicago Link, Ltd. (WCLL)

is Mr. J. Reilly McCarren. According to Mr. Barron, WCLL owns approximately 4.1 miles of track between Milepost 15 in Franklin Park, Illinois and Milepost 10.9 in Forest Park, Illinois. WCLL is also seeking a leasehold interest in Norfolk Southern's Panhandle Line (milepost 310 to 308) in Chicago. Mr. Barron states that the Panhandle line does not connect with WCLL, but access between the two is via CSX Transportation's Altenheim Subdivision. Mr. Barron stated that in addition to owning right-of-way, WCLL subleases freight cars for hire. According to Mr. Barron, WCLL currently conducts no common carrier operations on its own, but contracts its trackage for use by WCL. Mr. Barron stated that WCLL derives its income from car hire earnings. WCLL began operations on November 10, 1999 and reportedly has no employees. Mr. Barron stated that WCLL interchanges with WCL and the Baltimore and Ohio Chicago Terminal Railroad (B&OCT) (B. A. No. 1302).

In response to a request by the Board's Audit and Compliance Section for additional information regarding WCLL's subleasing of freight cars for hire, Mr. Barron provided further information stating that "WCLL does not currently receive any lease revenues from the subleasing of equipment."

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;

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

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a

primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this test to the facts of WCLL, the Board determines that WCLL is a covered rail carrier employer under the Acts. WCLL is a wholly owned subsidiary of Wisconsin Central Transportation Corporation, which is the parent company of Wisconsin Central Ltd. (BA No. 2633). We noted in our decision in B.C.D. No. 00-47 that an entity that is affiliated through common ownership with other for profit carriers will be presumed to have as a primary business purpose to profit from the ownership of the line. We do not have to reach the other two considerations since all three need to be present to remain outside the coverage of the RRA and the RUIA.

Accordingly, the Board finds that WCLL became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning November 10, 1999, the date it commenced operations.

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