B.C.D. 01-6

EMPLOYER STATUS DETERMINATION
Mohall Railroad, Inc.

JAN 1 0 2001

This is the determination of the Railroad Retirement Board regarding the status of Mohall Railroad, 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).

Information regarding Mohall Railroad was provided by Byron D. Olsen, counsel for Mohall. Information was also found in Surface Transportation Board (STB) Finance Docket No. 33855.

Mohall purchased a rail line of 42.55 miles in North Dakota from the Burlington Northern Santa Fe. Mohall has no employees but has contracted with the Northern Plains Railroad, an employer under the RRA and the RUIA (B.A. No. 2642), to operate the rail line. The rail operation will interchange with the Northern Plains Railroad. The beginning date of operations was June 1, 2000.

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 the same definition, 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. No. 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

Mohall Railroad, Inc.

operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

According to the above-cited Surface Transportation Board decision, the purpose of the Mohall operation is to provide rail service to "two presently active shippers * * * and any other parties desiring rail service * * * ." There is no information that would indicate that Mohall Railroad, Inc.'s intent in purchasing the line is primarily designed to preserve rail service rather than profit from railroading activities. Accordingly, the Board finds that Mohall has as a primary business purpose to profit from railroad activities. The Board therefore finds that Mohall became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning June 1, 2000, the date it began operations.

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