B.C.D. 01-8

EMPLOYER STATUS DETERMINATION
Monon Rail Preservation Corporation (MRPC)

JAN 1 0 2001

This is the determination of the Railroad Retirement Board concerning the status of the Monon Rail Preservation Corporation (MRPC) 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. 33668, decided on October 8, 1998, MRPC filed a verified notice of exemption to acquire 4.26 miles of rail line from CSX Transportation, Inc. (CSXT) (B.A. No. 1524), between milepost Q217.67 at Hunters, Indiana, and milepost Q213.41 at Ellettsville, Indiana. The transaction was to be consummated on or shortly after October 9, 1998. In a related transaction, STB Finance Docket No. 33669 provided that the Indiana Rail Road Company (IRRC) (B.A. No. 2341) would enter into a trackage rights agreement with MRPC for the operation of the line being acquired by MRPC from CSXT. According to the STB decision, the purpose of the trackage rights agreement was to permit IRRC to ensure the continuity of service to the shipper on the line pending consummation of the operating agreement. This transaction was to become effective immediately upon consummation of the transaction in STB Finance Docket No. 33668.

Information regarding MRPC was furnished by Mr. Theodore J. Ferguson, Attorney for MRPC. Mr. Ferguson stated that MRPC is a 501(c)(3) charitable corporation under the Internal Revenue Code controlled by municipal and county governments which began operations on October 31, 1998. The President of MRPC is Mr. Randy Lloyd. According to Mr. Ferguson, the intent of the venture was to preserve the rail corridor for future use for industrial and other uses. Mr. Ferguson stated that the rail corridor was slated for abandonment by CSXT prior to the acquisition by MRPC. Mr. Ferguson further stated that all operations of MRPC are performed by employees of IRRC, including maintenance of way, transportation services and mechanical services. He stated that all employees of IRRC are covered employees under the Railroad Retirement and Railroad Unemployment Insurance Acts. Mr. Ferguson stated that MRPC has no members and no employees. MRPC is in the process of granting operating rights to IRRC, according to Mr. Ferguson. Mr. Ferguson estimated the volume to be 6 to 12 carloads per year. According to Mr. Ferguson, the line to be operated by IRRC does not interchange with any other railroad.

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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 to the facts of MRPC, the Board determines that MRPC is not a covered employer under the Acts. The evidence of record shows that MRPC is a not-for profit charitable corporation. MRPC is controlled by municipal and county governments. The rail line in question was slated for abandonment by CSXT prior to its acquisition by MRPC. MRPC acquired the rail line to preserve the rail corridor for future use for industrial and other uses. Based on these facts, we find that MRPC does not have as a primary business purpose to profit from railroad activities. With respect to the second part of the Railroad Ventures test, the evidence shows that MRPC does not operate the rail line and does not have the capacity to operate the rail line. Turning to the third of the criteria, the record shows that IRRC, a covered rail carrier employer, conducts railroad operations over the line. The Board therefore finds that MRPC is not a carrier under the test set out in our Railroad Ventures decision.

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Accordingly, the Board finds that MRPC is not a covered rail carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

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