B.C.D. 01-9

JAN 1 0 2001

EMPLOYER STATUS DETERMINATION
Delphos Terminal Company, Inc. (DTC)

This is the determination of the Railroad Retirement Board regarding the status of Delphos Terminal Company, Inc. (DTC) 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 DTC was provided by Terrence E. Quinlan, Corporate Counsel for Central Soya Company, Inc. Mr. Quinlan stated that DTC is owned by Central Soya Company, Inc. The Chief Executive Officer of DTC is Carl L. Hausmann. Mr. Quinlan stated that DTC is incorporated and has no paid employees. In a decision in STB Finance Docket No. 33496 entered on October 22, 1997, the STB indicated that DTC filed a verified notice of exemption to acquire and operate approximately 3.8 miles of rail line owned and operated by R. Franklin Unger, Trustee of the Indiana Hi-Rail Corporation (Hi-Rail). The rail line is located between milepost 73.7, at or near Delphos, Ohio, and milepost 77.5, at or near Landeck, Ohio, together with interchange trackage connecting such line and Consolidated Rail Corporation (Conrail) (B.A. No. 1321) at or near Delphos. According to Mr. Quinlan, DTC does not operate any trains or issue any shipping documentation. DTC entered into an agreement with Conrail whereby Conrail agreed to perform as a contract operator all rail transportation services over the subject rail line owned by DTC. Mr. Quinlan stated that DTC does not provide rail service in connection with its ownership of the rail line and right of way; according to him, service is provided exclusively by Conrail (now by CSXT). DTC establishes the freight rates and collects all freight revenues according to Mr. Quinlan. DTC is paid a fee by Conrail (now CSXT) for use of its rail line. In addition, all maintenance of the rail line owned by DTC is performed by an independent contractor.

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. 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 DTC, the Board determines that DTC is a covered rail carrier employer. The record in this case indicates that DTC establishes the freight rates for its rail line and collects all freight revenues. In addition, DTC is paid a fee for the use of its rail line. Based upon this history of DTC's activities with respect to its rail line, we find that DTC has as a primary purpose to profit from railroad activities. 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 Delphos Terminal Company, Inc. became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts, effective October 24, 1997, the date it acquired its line of railroad.

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