B.C.D. 01-47

EMPLOYER STATUS DETERMINATION JUN 04 2001
PITTSBURGH INDUSTRIAL RAILROAD, INC.
PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY

This is the determination of the Railroad Retirement Board concerning the continuing status of Pittsburgh Industrial Railroad, Inc. (PIR), B.A. No. 2269, 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) and the status of Pittsburgh & Ohio Central Railroad Company (P&OC) as a new employer under the RRA and RUIA. P&OC has not heretofore been determined to be an employer under the Acts.

Effective February 9, 2001, PIR merged with and into P&OC. As a result of the merger, PIR ceased to exist and P&OC became the successor and survivor Ohio corporation. Evidence of this transaction is set forth in certificates of merger from the states of Ohio and Delaware. Authority for this transaction was granted in STB Finance Docket No. 33994, decided February 13, 2001. The purpose of the transaction was to remove and replace PIR, a Delaware corporation, with P&OC, a newly formed Ohio corporation, in order to simplify the tax compliance and administrative costs of its parent company, Summit View, Inc., a non-carrier holding company, because all of Summit's holdings were Ohio Corporations except for PIR. P&OC acquired all of PIR's assets and liabilities and continued the rail operations of PIR without any changes.

It is noted that STB Finance Docket No. 33994, cited above, refers to the merger of PIR and the "Pittsburgh & Ohio River Railroad Company" (emphasis added), and not to the Pittsburgh & Ohio Central Railroad Company, P&OC, the subject of this determination. This discrepancy was brought to the attention of Mr. Michael J. Conner, Vice President of P&OC. He advised that the substitution of the word "River" in place of the word "Central" was an error and that he would notify his attorneys to take corrective action with the Surface Transportation Board. It is clear from the merger documents from the states of Delaware and Ohio that the parties thereto referred to P&OC. It is also clear, as evidenced by the letterhead of Mr. Conner's letter to the Board on February 9, 2001, the date of the merger, that P&OC is the proper name of this new employer.

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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 [45 U.S.C. § 231(a)(1)(i)].

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 view of the foregoing, it is determined that Pittsburgh Industrial Railroad, Inc.(a Delaware corporation) ceased to be an employer under the RRA and RUIA on February 9, 2001, when it merged with and into Pittsburgh & Ohio Central Railroad (an Ohio corporation). It is also determined that Pittsburgh & Ohio Central Railroad Company became an employer under the RRA and the RUIA on February 9, 2001, the date it began actual railroad operations in place of PIR.

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