B.C.D. 01-61

JUL 1 0 2001

EMPLOYER STATUS DETERMINATION
Ventura County Railway Company (VCRC)

This is a determination of the Railroad Retirement Board concerning the status of the Ventura County Railway Company (VCRC) (BA No. 3742) 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). VCRC has been an employer under the RRA and the RUIA, with service creditable from May 15, 1911.

On September 1, 1998, Ventura County Railroad Company (VCRR)(BA No. 2786) entered into an agreement with VCRC to lease from VCRC its rail line and all improvements thereon. In Surface Transportation Board (STB) Finance Docket No. 33649 decided December 16, 1998, VCRR filed a verified notice of exemption to lease from VCRC approximately 12.09 miles of rail line.

According to information obtained from Randall A. Cohen, attorney for VCRC, VCRC ceased railroad operations on August 31, 1998 and has had no involvement in railroad operations since that time. The corporation continues to exist and collects monthly rent from VCRR. VCRC employees were last compensated for work performed through August 31, 1998. They were all offered the opportunity to interview for employment positions with VCRR, and Mr. Cohen believes that at least a couple of former VCRC employees were hired by VCRR. VCRC has sold all movable assets to VCRR, including all vehicles, locomotives, office equipment, equipment inventories and maintenance materials. Though title to the real property is still held by VCRC, VCRR is entirely obligated for the maintenance and upkeep of the property and has all rights to use the property.

The Railroad Retirement Board's regulations provide that the employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status. (20 CFR §202.11). VCRC ceased railroad operations on August 31, 1998 and last compensated employees

Ventura County Railway Company (VCRC)

for services performed that date. In addition, VCRC has sold all movable assets and leased to VCRR all real property assets. VCRC has no responsibilities for railroad operations and does not own any moveable equipment with which to operate a railroad.

A majority of the Board, Labor Member dissenting, finds that the evidence of record establishes that, effective with the close of business on August 31, 1998, VCRC was no longer a rail carrier operating in interstate commerce. Accordingly, a majority of the Board determines that VCRC's status as an employer under section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act terminated effective with the close of business on August 31, 1998, the day that VCRC last performed railroad operations.

Cheryl T. Thomas

V. M. Speakman, Jr. (Dissenting)

Jerome F. Kever

DISSENT OF
V. M. SPEAKMAN, JR.
EMPLOYER STATUS DETERMINATION
VENTURA COUNTY RAILWAY COMPANY (VCRC)

The evidence in this case shows that Ventura County Railway Company (VCRC) still has ownership of the rail line used in interstate commerce and there is nothing to show it has been removed from Surface Transportation Board jurisdiction, or relieved of the responsibilities that go with that jurisdiction. The corporation continues to exist and receives income from Ventura County Railroad Company based on its ownership of its rail line.

For the reasons stated, I respectfully dissent from the majority on this case.

V. M. Speakman, Jr.

V. M. Speakman, Jr.

JUL 06 2001

Date