B.C.D. 01-66

JUL 26 2001

Employer Status Determination
Northwestern Pacific Railroad
(also known as North Coast Railroad Authority)

This is the determination of the Railroad Retirement Board regarding the continuing status of Northwestern Pacific Railroad (also known as North Coast Railroad Authority) (B.A. No. 3783) 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).

On July 23, 1992, North Coast Railroad Authority was held to be an employer under the Acts effective April 1, 1992. North Coast Railroad Authority was created by the California State Legislature for the purpose of ensuring railroad service if the Interstate Commerce Commission authorized the abandonment or discontinuance of service on, or in the event of the bankruptcy or sale of, among others, the Eureka Southern Railroad line. On July 22, 1996, North Coast Railroad Authority became known as Northwestern Pacific Railroad (NWP), although it appears that the name "North Coast Railroad Authority" continued to be used.

On May 12, 1998, NWP contracted with Rail-Ways, Inc., to lease and operate the rail line. As a consequence, Rail-Ways was held to be a covered employer under the Acts (B.A. No. 2790). Although the contract was not entered into until May 12, 1998, Rail-Ways began operations February 23, 1998, and was held to be an employer effective with that date. Since that date NWP reports that it has had one to two employees (an administrative assistant and an executive director). Northwestern Pacific Railway, LLC purchased the contract from Rail-Ways and, on February 13, 2001, began operating the rail line. On April 30, 2001, the Board held Northwestern Pacific Railway, LLC to be an employer effective February 13, 2001 (B.C.D. No. 01-37; B.A. No. 2793). See Surface Transportation Board Finance Docket No. 33998, decided January 30, 2001.

On June 7, 2001, Mr. Christopher J. Neary, counsel for NWP, wrote the Board and requested that coverage of NWP be terminated.

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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 the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

With respect to NWP, the Board notes that in its decision regarding 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 operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

In this case, the Board finds that all three factors do exist. NWP did not have a primary purpose to profit from railroad activities but was explicitly created to preserve rail service where it was feared such service would be terminated. NWP does not retain the capacity to operate the rail line; and, as mentioned above, the company, Rail-Ways, Inc., which operated the rail line beginning February 23, 1998, and

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Northwestern Pacific Railway, LLC, which operated the rail line beginning February 13, 2001, are both employers under the Acts.

Accordingly, the Board finds that the coverage of Northwestern Pacific Railroad, also known as North Coast Railroad Authority, terminated effective February 23, 1998.

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