B.C.D. 01-70

EMPLOYER DETERMINATION AUG 2 7 2001
East Chattanooga Belt Railway Company

This is a determination of the Railroad Retirement Board concerning the status of East Chattanooga Belt Railway Company (ECBT)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. 34024, decided April 3, 2001, ECBT filed a verified notice of exemption to acquire by lease and operate a line of railroad owned by Norfolk Southern Railway Company (NS) (B.A. No. 1525). The rail line begins approximately at NS milepost 448 in the vicinity of CP 23rd Street, railroad valuation station 1+25, and extending to valuation station 5633+27, at the intersection of the rail line and Awtry Street, a distance of approximately 4.4 route miles in Chattanooga, Tennessee. The STB decision stated that ECBT and NS intended to consummate the transaction on or after the April 4, 2001 effective date of the exemption.

Information regarding ECBT was provided by Mr. Tim Andrews, President of ECBT. According to Mr. Andrews, Tennessee Valley Railroad Museum is the owner of ECBT. Mr. Andrews stated that ECBT began rail operations over its 4.3 miles of rail line on April 4, 2001. ECBT hired one employee who began on April 1, 2001 and hired two more employees who began on April 4, 2001. Mr. Andrews further stated that ECBT provides common carrier freight service and expects to handle approximately 150 carloads of freight annually. Mr. Andrews also stated that although ECBT only interchanges with NS, ECBT provides operations on an as needed basis to deliver cars between ECBT's Norfolk Southern Interchange and the three on-line customers. Mr. Andrews also noted that Norfolk Southern pays ECBT a set amount per car to move the cars between the interchange and the customers.

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:

East Chattanooga Belt Railway Company

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transpiration Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that ECBT is a rail carrier operating in interstate commerce. Accordingly, it is determined that East Chattanooga Belt Railway Company became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective April 1, 2001, the date as of which its first employee was first compensated. [Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

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