B.C.D. 01-73

SEP 2 0 2001

EMPLOYER STATUS DETERMINATION
Central Illinois Railroad Company

This is the determination of the Railroad Retirement Board concerning the status of Central Illinois Railroad Company, as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding Central Illinois was provided by Thomas F. McFarland, counsel for Central Illinois. According to Mr. McFarland, Central Illinois began doing business May 1, 2001. Central Illinois reports that it currently has three employees.

In Surface Transportation Board Finance Docket No. 34035, Central Illinois filed a notice of exemption to lease and operate approximately 25 miles of rail line owned by Union Pacific Railroad Company and the Canadian Pacific Rail System. Central Illinois's operations involve switching freight cars to and from the facilities of shippers and receivers in Centex Industrial Park, Elk Grove Village, Illinois, as agent for Union Pacific. According to Mr. McFarland, annual freight traffic volume is expected to be about 3,500 to 4, 000 cars. Union Pacific has full control over the rates and charges for that traffic, and bills the shippers and receivers for the entire transportation services for that traffic. Central Illinois is compensated for its services by a monthly fee paid by Union Pacific.

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).

The definition section of Part A of Subtitle IV of Title 49 of the United States Code defines "railroad" to include a switch, spur, track, terminal, or terminal facility as well as a freight depot, yard, and ground used or necessary for transportation (49 U.S.C. § 10102(6)(C)). It is well settled that a terminal or switching company is a common carrier rather than a private carrier if it holds itself out to be one, acts in that capacity, and is dealt with in that capacity by railroads in general. U.S. v. California, 297 U.S. 175 (1936). The portion of Title 49 that is cited in the definition of "employer" in the Railroad Retirement Act gives to the Surface Transportation Board jurisdiction over railroad transportation in the United States between a place in "a State and a place in the same or another State as part of the interstate rail network" (49 U.S.C. § 10501(a)(2)(A)). Consistent with the foregoing, the Board has held switching railroads to be covered employers under the Railroad Retirement and Railroad Unemployment Insurance Acts where they act in the capacity of a common carrier subject to the jurisdiction of the Surface Transportation Board. Conversely, where switching operations are conducted by a plant owner for itself, these operations do not result in the plant owner being a covered employer under the Acts.

Although Central Illinois conducts its switching operation within Centex Industrial Park (which is owned by the Village of Elk Grove, Illinois), it performs those operations as a liaison between Union Pacific and shippers and receivers, holding itself out to the public as engaging in the business of transporting freight to and from the Union Pacific. The Board therefore finds that Central Illinois became a rail carrier employer within the definition set out in section 1(a)(1)(i) of the

Central Illinois Railroad Company

Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective May 1, 2001, the date as of which it commenced operations.

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