B.C.D. 01-85

DEC 04 2001

EMPLOYER STATUS DETERMINATION
Big Eagle Rail, LLC

This is the determination of the Railroad Retirement Board concerning the status of Big Eagle Rail, LLC (BER) 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 Finance Docket No. 33920 (STB), decided September 7, 2000, BER filed a verified notice of exemption to lease from Kanawha Rail Corp and operate rail trackage located in Kanawha County, West Virginia, together with other associated rail properties. The rail line extends from its northern terminus at an interchange with CSX Transportation, Inc. (CSXT) (B.A. No. 1524) at CSXT station 670+30, south along Field Creek, in Cabin Creek District, for approximately 6.47 miles, to its southern terminus.

Information regarding BER was provided by E. Forrest Jones, Jr, Outside Counsel for BER. According to Mr. Jones, Edwin D. Bunn is the Chief Executive Officer for BER. Mr. Jones stated that pursuant to BER and Kanawha's lease agreement, BER's primary purpose is to transport an average of 70,000 tons of coal per month from the point of mining operations to loading facilities on the Kanawha River. Mr. Jones stated that BER began rail operations on August 20, 2000, but also reported that BER has not hired any employees. Mr. Jones stated that BER hired an independent contractor, Appalachian Railcar Services, Inc. (ARS), to operate BER's trains.[1] Mr. Jones stated that ARS is solely responsible for transporting coal on BER's rail line. Mr. Jones stated that BER does not interchange rail cars with a covered employer under the Railroad Retirement Act; however, BER loads coal onto CSXT's rail cars, which CSXT transports to the respective destination.

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; 45 U.S.C. § 231(a)(1)(i).

[1] The Board s Audit and Compliance Section is reviewing the status of Appalachian Railcar Services, Inc.

Big Eagle Rail, LLC

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

The evidence establishes that Big Eagle Rail, LLC is subject to the jurisdiction of the Surface Transportation Board and received authorization from the STB to lease and operate the rail trackage located in Kanawha County, West Virginia. Accordingly, it is determined that Big Eagle Rail, LLC became an employer within the meaning of 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 effective August 20, 2000, the date on which it began railroad operations.

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