B.C.D. 02-19

MAR 0 8 2002

**EMPLOYER STATUS DETERMINATION**
Dickinson Osceola Railroad Association

This is the decision of the Railroad Retirement Board with respect to the status of the Dickinson Osceola Railroad Association (DORA) 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 a decision of the Surface Transportation Board dated February 23, 2001, DORA was granted an exemption under 49 CFR 1150.31 to acquire by purchase and operate approximately 37.21 miles of rail line located within the state of Iowa. According to a letter from Mr. John D. Heffner, an attorney representing DORA, DORA is a nonprofit, tax-exempt entity established by the Osceola County Development Commission for the purpose of preserving rail service on a branch line in northwestern Iowa.

Originally it was intended by the Development Commission that DORA would purchase the branch line and lease it to a short line rail operator. However, DORA was not able to complete this planned transaction. Rather, DORA actually purchased the rail line on April 2, 2001, and promptly resold the line to its contract operator, General Railway Corporation d/b/a Iowa Northwestern Railroad, an employer covered by the Acts (BA 9846). The evidence of record does not clearly identify the date that DORA sold the lines to Grand Railway Corporation d/b/a Iowa Northwestern Railroad. Authority for this transaction was obtained in STB Finance Docket No. 34037, decided May 4, 2001.

DORA no longer owns the rail line and has no ability to operate a railroad. DORA has never had as one of its primary business goals the making of a profit from railroad service. Rather, DORA exists solely to facilitate and maintain rail service in northwestern Iowa.

There is no doubt that for the period after DORA sold the rail line to the General Railway Corporation d/b/a Iowa Northwestern Railroad that it is not an employer under the Acts. For the period after DORA acquired the rail line and before it sold the rail line, it is also not an employer under the Acts.

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In Board Coverage Decision 00-47, November 7, 2000, the Board refined the standard we employ to determine when an entity that has its railroad functions performed by another would be found to be an employer under the Acts. In that coverage decision, the Board set forth a three-part test that it would use to determine the employer status of such an entity. The three-part test is as follows:

1) whether the entity does not have as a primary purpose to profit from railroad activities;

2) whether the entity does not operate or retain the capacity to operate the rail line;

3) whether the operator of the rail line is already covered under the [RRA and RUIA]. B.C.D 00-47, at pages 4-5.

DORA is not an employer under the three-part test set forth in B.C.D. 00-47. DORA was established by a public entity that set up DORA to facilitate the maintenance of rail service on a branch line in northwestern Iowa. As such, it does not have a primary purpose of profiting from rail activities. DORA does not retain the capacity to operate a rail line. Finally, DORA never operated over the rail line. In conclusion, under the test set forth in B.C.D. 00-47, DORA is not covered by the RRA and the RUIA for the period that it actually owned the rail line.

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