B.C.D. 02-24

MAR 2 5 2002

EMPLOYER STATUS DETERMINATION
Elkhart & Western Railroad Company (EWRR)

This is a determination of the Railroad Retirement Board concerning the status of the Elkhart & Western Railroad Company (EWRR) 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.).

In Surface Transportation Board (STB) Finance Docket 33941, decided September 29, 2000, Pioneer Railcorp (Pioneer) and Michigan Southern Railroad Company (MSO)[1] filed a verified notice of exemption involving the reorganization of the MSO holdings and the creation of two new subsidiaries of MSO: EWRR and Kendallville Terminal Railway Company (KTRR). According to the STB decision, MSO would assign its operating leases of the "Elkhart Segment" to EWRR. The "Elkhart Segment" is located between milepost 0.00 at Elkhart, Indiana and milepost 9.8 at Mishiwaka, Indiana, according to the STB decision.

Information regarding EWRR was furnished by Mr. J. Michal Carr, Chief Financial Officer of EWRR. The Chief Executive Officer of EWRR is Mr. Guy L. Brenkman. Mr. Carr reported that EWRR began operations on May 1, 2001 and currently has no employees. Mr. Carr stated that employees are provided to EWRR by Michigan Southern Railroad Company on a contract basis. According to Mr. Carr, EWRR is a freight operation that provides common carrier freight service to customers in Elkhart, Indiana." Further, Mr. Carr stated that EWRR has "annualized volume of traffic estimated to be 700 cars." EWRR interchanges with Norfolk Southern Railway Company (NS) (B.A. No. 1525) at Elkhart, Indiana.

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.

[1] The Board determined Wabash & Western Railway d/b/a Michigan Southern Railroad (MSRR) (B.A. No. 2271) to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective December 19, 1996, the date as of which it commenced operations.

Elkhart & Western Railroad Company (EWRR)

The evidence of record establishes that EWRR is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Elkhart & Western Railroad Company (EWRR) 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 May 1, 2001, the date as of which it commenced operations.

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