B.C.D. 02-37

MAY 1 3 2002

**EMPLOYER STATUS DETERMINATION**
**Emons Logistics Services, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of Emons Logistics Services, Inc., 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.).

On February 22, 2002, Genesee & Wyoming, Inc., acquired the following companies from Emons Railroad Group, Inc., a covered employer under the Acts since January 1, 1990 (B.A. No. 9346): York Railway Company (a covered employer since December 1, 1999; B.A. No. 2387); St. Lawrence & Atlantic Railroad Company (a covered employer since May 22, 1989; B.A. No. 2125); Penn Eastern Rail Lines, Inc. (a covered employer since December 31, 1997; B.A. No. 2378); and Emons Logistics Services, Inc. See Surface Transportation Board Finance Docket No. 34148. Emons was formed on October 10, 1989. It currently has four employees and transloads freight for its affiliate York Railway Company. Formerly, service performed by Emons employees was reported under B.A. No. 2387, York Railway Company.

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;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

**Emons Logistics Services, Inc.**

All of the operations of Emons involve providing service to its rail affiliate, York Railway, a covered employer under the Acts. Therefore, Emons is under common control with a rail carrier and performs service in connection with rail transportation. Accordingly, it is determined that Emons is an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act as of February 22, 2002, the date as of which it was acquired by Genessee & Wyoming Services, Inc.

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