B.C.D. 02-38

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EMPLOYER STATUS DETERMINATION
C&C Railroad, Inc. (C&CRR)
C&C Railroad, LLC (C&CLLC)

This is a determination of the Railroad Retirement Board concerning the status of C&C Railroad, Inc. (C&CRR) and C&C Railroad, LLC (C&CLLC) as employers 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 (STB) Finance Docket 33990, decided January 8, 2001, C&CRR filed a verified notice of exemption to acquire the operating authority on eight rail lines owned by Centerpoint Properties, L.L.C. (Centerpoint), and leased to The Custom Companies, Inc. (Custom). The lines total about 1.71 miles and they connect with track located in the Union Pacific Global Two Intermodal Yard, near Union Pacific milepost 3.0. The lines are located in an office, warehouse, and dock facility at 317 West Lake Street in Northlake, Illinois. According to the STB decision, pursuant to an agreement with Custom, C&CRR would acquire the right to operate the lines for the purpose of shuttling cars solely on Centerpoint's property.

In an additional STB decision, STB Finance Docket 34062, decided July 16, 2001, C&CRR filed a notice of exemption wherein C&CRR would be merged with and into C&CLLC. According to the STB decision, C&CLLC was a newly formed limited liability company organized by the shareholders of C&CRR for the sole purpose of reincorporating in the State of Delaware. As stated in the STB decision, the separate existence of C&CRR would cease and C&CLLC would be the surviving entity. According to the Agreement and Plan of Merger between C&CRR and C&CLLC, C&CRR's merger with C&CLLC was to take effect upon the filing of the Certificate of Merger with the Delaware Secretary of State. The STB decision stated that C&CLLC would continue the operations formerly provided by C&CRR.

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Information regarding C&CRR and C&CLLC was furnished by Mr. Erik L. Kantz, Attorney for C&CRR and C&CLLC. As stated above, Mr. Kantz reported that C&CRR, an Illinois corporation, merged with the C&CLLC on July 13, 2001, pursuant to authority in Finance Docket No. 34062. According to Mr. Kantz, Mr. Perry Mandera is the Manager of C&CLLC. Mr. Kantz stated that C&CRR was authorized to begin operations effective January 9, 2001. As of the merger on July 13, 2001, C&CLLC had one employee who was to be compensated beginning July 15, 2001. As of April 2001, C&CRR reportedly had not performed any freight operations, according to Mr. Kantz. Mr. Kantz stated that C&CLLC is 50 percent owned by Custom, an Illinois corporation; however Centerpoint owns no interest in either C&CLLC or Custom. Centerpoint owns the Northlake, Illinois property, which it leases to Custom, pursuant to a lease agreement. C&CLLC operates under a license agreement with Custom, and is permitted to operate the rail lines to assist Custom and CLP Transportation, Inc. (CLPT) in the movement of freight, according to Mr. Kantz. C&CLLC interchanges with Union Pacific Railroad (UP) (B.A. No. 1715).

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.A § 3231).

The record in this case indicates that C&CRR became a rail carrier employer within the definition quoted above effective January 9, 2001.

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See Rev. Ruling 82-100,1982-1 C.B. 155. The record also indicates that C&CRR ceased to be a rail carrier employer and that C&CLLC became a rail carrier employer on July 13, 2001, the date on which C&CRR merged with C&CLLC and on which C&CLLC took on the rail carrier obligation formerly held by C&CRR according to STB Finance Docket No. 34062.

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