B.C.D. 02-47

JUN 2 7 2002

EMPLOYER STATUS DETERMINATION
Appalachian Railcar Services, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Appalachian Railcar Services, Inc., as an employer under the Railroad Retirement Act (RRA)(45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (RUIA)(45 U.S.C. § 351 et seq.).

Appalachian was incorporated February 29, 2000, and began operations performing rail car repairs in May 2000. Appalachian also operates a shortline railroad under contract with Big Eagle Rail, LLC. In Surface Transportation Board Finance Docket No. 33920, Big Eagle filed a verified notice of exemption to lease and operate a rail line which interchanges with CSX Transportation. Big Eagle began operations August 20, 2000, and was held by the Board to be an employer under the RRA and the RUIA as of that date (B.C.D. No. 01-85, December 4, 2001). Approximately 8.8 percent of Appalachian's revenue is attributable to the Big Eagle operation.

Section 1(a)(1) of the RRA (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 RUIA (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. § 3231).

The evidence of record establishes that Appalachian is a carrier operating in interstate commerce. Contrary to the contention of Appalachian that Big Eagle is a private carrier, Big Eagle is as noted above subject to the jurisdiction of the Surface Transportation Board and consequently has been held to be a carrier under the RRA and RUIA. Accordingly, because Appalachian is conducting rail operations over Big Eagle's rail line, it is determined that Appalachian became an

Appalachian Railcar Services, Inc.

employer within the meaning of section 1(a)(1)(i) of the RRA (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the RUIA effective August 20, 2000, the date on which it commenced operation of the Big Eagle rail line.

Because the evidence indicates that only about 8.8 percent of Appalachian's revenue is attributable to the Big Eagle operations, we will consider next whether the concept of segregation should be applied to Appalachian.

Section 202.3 of the regulations of the Board provides that:

> (a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:
>
> (1) The primary purpose of the company or person on and since the date it was established;
>
> (2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;
>
> (3) The amount of its carrier business and the ratio of such business to its entire business;
>
> (4) Whether its carrier business is a separate and distinct enterprise.
>
> (b) In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or

Appalachian Railcar Services, Inc.

> units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer. (Emphasis added.)

Since Appalachian is not predominantly engaged in carrier business, and its only carrier business is the operation of Big Eagle, it is the determination of the Board that section 202.3 of the regulations applies so that Appalachian is a covered employer only to the extent that its employees engage in the operation of Big Eagle. Thus, only service performed while conducting Big Eagle's rail operations is creditable under the RRA and the RUIA.

In our decision with respect to the status of Big Eagle, (B.C.D. No. 01-85, issued December 4, 2001), we described Big Eagle's operations by stating that Big Eagle'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 and that Big Eagle loads coal onto CSXT's rail cars, which CSXT transports to the respective destination. We must point out that our decision to apply segregation to Appalachian Railcar Services, Inc. (ARS) is intended to cover all ARS employees who work in any capacity in the operation of Big Eagle.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever