B.C.D. 02-59

AUG 14 2002

EMPLOYER STATUS DETERMINATION
Cloquet Terminal Railroad Company, Inc.

This is a determination of the Railroad Retirement Board concerning the status of Cloquet Terminal Railroad Company, Inc. (CTRR) as an employer under the Railroad Retirement Act (45 U.S.C. §§ 231-231v) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351-369) (RUIA).

In Finance Docket No. 34185, decided May 23, 2002, CTRR filed a verified notice of exemption to acquire from Duluth & Northeastern Railroad Company (D&NE) (BA No. 2605) and operate the assets currently owned by D&NE, including a line of railroad between milepost 0.0 and milepost 1.24, a distance of 1.24 miles in Cloquet, Carlton County, MN. The decision noted that the transaction was expected to be consummated on or after the effective date of the exemption (7 days after the exemption was filed).

In response to an inquiry from the Chief of the Board's Audit and Compliance Section, the Board received the following information from attorney Barry McGrath, on behalf of his client, CTRR. CTRR is owned by Sappi Cloquet LLC and its Chief Executive Officer is Kathleen A. Walters. CTRR began operations on May 13, 2002 and has 23 employees. CTRR's operations are described as follows: 1) on demand switching for the Sappi Cloquet LLC mill site located in Cloquet, Minnesota; 2) switching for USG Interiors in Cloquet, Minnesota; 3) switching for the SMI Plant located on the mill site in Cloquet, Minnesota; and 4) seven day, 20 hour switching to connecting line haul carriers Burlington Northern and Santa Fe Railway Company (BA No. 1621) and the Soo Line Railroad Company, d/b/a Canadian Pacific Railway (BA No. 1104). CTRR estimated the expected freight volume in 2002 at 6200 cars. The line of railroad acquired by CTRR through asset acquisition from D&NE constituted D&NE's entire rail line.[1]

Section 1(a)(1) of the RRA (45 U.S.C. § 231(a)(1)), insofar as is 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 [45 U.S.C. § 231(a)(1)].

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[1] The Board's Audit and Compliance Section is reviewing the continued status of D&NE as a covered employer under the RRA and the RUIA.

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

The record in this case indicates that CTRR is subject to STB jurisdiction by virtue of its operation over the 1.24 miles of rail line between Milepost 0.0 to Milepost 1.24 in Cloquet, MN, which is used for switching purposes involving interstate commerce. Because CTRR falls within the definition of employer under section 1(a)(1)(i) of the RRA (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the RUIA, the Board finds that CTRR became a rail carrier employer effective May 13, 2002, the date on which it began start-up operations. Cf Rev. Rul. 82-100, 1982-1 C.B. 155.

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