B.C.D. 02-71

EMPLOYER STATUS DETERMINATION OCT 2 2 2002
C & J Railroad Company d/b/a Mississippi Delta Railroad

This is the determination of the Railroad Retirement Board concerning the status of C & J Railroad Company d/b/a Mississippi Delta Railroad, 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.).

Information regarding C & J was provided by Reggie Howell, President and sole owner of C & J. According to Mr. Howell, C & J was incorporated December 9, 1991, and began doing business as Mississippi Delta Railroad on July 1, 2001. The rail lines involved and the name, Mississippi Delta Railroad, were leased from Coahoma County, Mississippi, which had acquired them from a number of different owners[1].

C & J operates 60 miles of railroad between Swan Lake and Jonestown. Mr. Howell, characterizes C & J as a switching railroad which interchanges with Canadian National Railways and Illinois Central Railroad Company, covered employers under the Acts (B.A. Numbers 1103 and 1516, respectively). C & J has not obtained authority from the Surface Transportation Board and does not have any employees[2]; Mr. Howell advises that C & J contracts for the provision of services with temporary agencies.

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;

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1 Gulf & Ohio Railways (B.A. number 9521) and Mississippi Delta Railroad (B.A. number 2575), then a division of Gulf & Ohio Railways, were held to be employers under the Acts effective December 31, 1985. See Legal Opinion L-86-57. Apparently both companies reported under the same B.A. number, 2575. The coverage of Gulf & Ohio Railways was terminated effective July 31, 2001 (B.C.D. 02-20). The termination of the coverage of Gulf & Ohio Railways included the termination of its division, Mississippi Delta Railroad, though it was not named in the decision.

2 The Board is presently examining the issue of the individuals providing services to C & J Railroad.

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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. § 3231).

The evidence of record establishes that C & J is a carrier operating in interstate commerce. The fact that it has not obtained authorization from the Surface Transportation Board (STB) is not determinative of coverage under the Acts administered by the Board. As indicated above, the Railroad Retirement Act covers any carrier by railroad subject to the jurisdiction of the STB. The STB has jurisdiction over transportation by rail carrier. See 45 U.S.C. § 10501. Title 49 U.S.C. § 10102(5) defines a "rail carrier" as a person providing "railroad transportation for compensation." Accordingly, as a person providing "railroad transportation for compensation," C & J would be a rail carrier under the jurisdiction of the STB and therefore would be a carrier under the Railroad Retirement Act. It may be considered that the Railroad Retirement Act covers "substantially all those organizations which are intimately related to the transportation of passengers or property by railroad in the United States. S. Rep. No. 818, 75th Cong. 1st Sess. 4 (1937)." Standard Office Bldg. Corp. v. U.S., 819 F. 2d 1371, 1376 (7th Cir. 1987).

Accordingly, the Board finds that C & J is a rail carrier employer providing carrier services under the Railroad Retirement and Railroad Unemployment Insurance Acts effective July 1, 2001, the date on which it began rail carrier operations.

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