B.C.D. 02-73

EMPLOYER STATUS DETERMINATION

OCT 3 0 2002

Tioga Central Railroad Company, Inc. (TIOC) (B.A. No. 3271)
Tioga Central Railroad, Inc. (TCRI)

This is a determination of the Railroad Retirement Board concerning the status of Tioga Central Railroad Company, Inc. (TIOC) and Tioga Central Railroad, Inc. (TCRI) as employers 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 TIOC and TCRI was furnished by Mr. Richard L. Stoving, President of TCRI. According to Mr. Stoving, TIOC, a New York State corporation, was merged into TCRI, a Pennsylvania corporation effective by Articles of Merger dated July 2, 1999. Mr. Stoving stated that as TCRI, the company continues to operate solely as a tourist passenger excursion train. Mr. Stoving stated that the principal shareholders of TCRI are himself, Mr. David S. Dropkin of Wellsboro, PA, Mr. Roger A. Smith of Edwell, PA, and Mr. Gerald R. Bertoldo of Attica, NY. Mr. Stoving reported that TCRI began operations on July 2, 1999 and currently has no employees. Mr. Stoving stated that TCRI "relies wholly on volunteer effort to maintain and operate its equipment." According to Mr. Stoving, TCRI owns no trackage but has trackage rights over the Wellsboro and Corning Railroad (WCRR) (B.A. No. 2256).

According to its passenger brochure/schedule, TCRI operates from the Wellsboro Junction Passenger Station "a twenty-four-mile round trip to the north end of Hammond Lake on a railroad that was built in 1872 to carry coal out of Antrim, Pennsylvania." The passenger schedule refers to TCRI as "Pennsylvania's Most Scenic Excursion Railroad." According to the passenger brochure, TCRI operates between mileposts 106 and 94 from Wellsboro, Pennsylvania to about three miles south of Corning, New York . The passenger schedule indicated that TCRI operates Saturdays and Sundays May 11 thru October 20, and "occasionally on weekdays." TCRI also operates "special trains" for "Wellsboro Rail Days" and "Wellsboro's Dickens of A Christmas." The passenger brochure indicates that regular freight service on the line is maintained by WCRR.

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:

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> (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.

Section 1 of the RUIA contains the same definition.

Section 202.12(a) of the Board's regulations provides in pertinent part that "The actual date of cessation of employer status shall be the date upon which final or complete cessation of an essential employer characteristic occurs." Section 202.12(a) then sets out examples of the type of evidence that the Board will consider in determining the actual date of cessation of employer status. In this case, TCRI reportedly stopped operating in the state of New York in 1992, but retained most of its equipment and moved it to Pennsylvania in 1993. The tourist operation began in May 1994. It is the opinion of the Board, based upon available evidence, that the date of TIOC's merger into Tioga Central Railroad, Inc., July 2, 1999, so that TIOC no longer existed as a separate entity, marks the actual date on which TIOC lost a characteristic which made it impossible for TIOC to continue as a covered employer under the RRA and the RUIA. The Board, therefore, finds that with the close of business on July 2, 1999, the last date that it compensated employees, the Tioga Central Railroad Company ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

Regarding TCRI, the information summarized above indicates that TCRI is a carrier by rail since it operates a passenger railway. However, TCRI does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of Pennsylvania. Thus, it is not within the jurisdiction of the Surface Transportation Board (STB). See, 49 U.S.C. §10501(a)(2)(A) (the STB has jurisdiction over rail carrier transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network).

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Therefore, the Board finds that since Tioga Central Railroad, Inc. does not perform service as a rail common carrier in interstate commerce, it is not an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever