B.C.D. 02-92

DEC 2 6 2002

EMPLOYER STATUS DETERMINATION
Iowa, Chicago & Eastern Railroad Corporation

This is the decision of the Railroad Retirement Board regarding the status of Iowa, Chicago & Eastern Railroad Corporation (IC&E RR) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The status of this company has not previously been considered.

The evidence is that in Surface Transportation Board (STB) Finance Docket No. 34177, decided June 12, 2002, IC&E RR filed a verified notice of exemption to acquire from I & M Rail Link[1] and to operate approximately 1,125 miles of track running between Chicago, Kansas City, Minneapolis/St. Paul, and parts of Iowa and Minnesota; to acquire the interest of I & M Rail Link in trackage rights over approximately 275 additional miles of rail line of other carriers; and to acquire the interest of I & M Rail Link in various other joint agencies and industrial trackage. See: Iowa, Chicago & Eastern Railroad Corporation-- Acquisition and Operation Exemption - Lines of I&M Rail Link, LLC , 67 Fed. Reg. 41297. In a subsequent decision, the STB allowed the acquisition to proceed, subject to pending petitions to revoke. Id., July 22, 2002.

Information regarding IC&E RR was provided by Ms. Kristi Stein, Assistant Comptroller of Cedar American Rail Holdings, Inc.[2] The original notice of exemption filed in June stated that IC&E RR intended to consummate the transaction on or after June 28, 2002. According to Ms. Stein, after the temporary stay of the transaction was lifted by the STB in its July 22 decision, IC&E closed its purchase of the assets of I&M Rail Link, first compensated employees, and began operations on July 30, 2002. Ms. Stein states that IC&E RR interchanges directly or indirectly with 17 rail carriers, including the Burlington Northern Santa Fe and the Union Pacific. She also advises that between 500 and 550 employees of I&M Rail Link became employees of IC&E RR.

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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1 The Board determined I&M Rail Link, LLC, to be a rail carrier employer covered by the Acts in Board Coverage Decision 97-79, with service creditable from January 30, 1997. See BA no. 5623.
2 The status under the Acts of Cedar American Rail Holdings, Inc., which is the parent company of IC&E RR, is currently under review.

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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 essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that IC&E RR is a rail carrier operating in interstate commerce, having acquired the rail lines and trackage rights of I&M Rail Link, LLC.[3] Accordingly, it is determined that the Iowa, Chicago & Eastern Railroad Corporation became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective July 30, 2002, the date as of which its first employee was first compensated. Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.

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3 As the evidence is that I&M Rail Link currently retains a few employees in connection with termination of its operations, the status of that company under the Acts must be the subject of a later determination.