B.C.D. 03-21

FEB 26 2003

EMPLOYER STATUS DETERMINATION
North Carolina Ports Railway Commission
Beaufort & Morehead Railway

This is the decision of the Railroad Retirement Board regarding the continued status of the North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway, as an employer under the Railroad Retirement Act (45 U.S.C. § 231, et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA).

The Beaufort & Morehead was held to be an employer under the Acts effective February 4, 1991, when it assumed operation of approximately three miles of rail line between Morehead City and Beaufort, North Carolina. On March 7, 2000, the North Carolina Ports Railway Commission (Railway Commission) reported that the Surface Transportation Board had approved the acquisition of the lease and operation of the railway line by the Railway Commission. See: North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway-Acquisition and Operation Exemption-Beaufort & Morehead Railway, Inc., STB Finance Docket No. 33826, 64 Fed. Reg. 67619, December 2, 1999. Accordingly, the Board held the Railway Commission to be a reactivated employer (B.A. No. 4560) effective January 1, 2000, and terminated the coverage under the Acts of the Beaufort & Morehead effective December 31, 1999 (B.C.D. 00-41).

The Beaufort & Morehead filed a notice of exemption to re-acquire and operate the rail line which had been previously transferred to the Railway Commission. See: Beaufort & Morehead Railway-Acquisition and Operation Exemption - North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway, Inc., STB Finance Docket No. 34151, 67 Fed. Reg. 2729, January 11, 2002. Consequently, the Board held the Beaufort & Morehead to be an employer under the Acts effective December 28, 2001 (B.A. Number 5557; B.C.D. Number 02-29). No action was taken regarding the Railway Commission.

Legislation enacted September 20, 2002, abolished the Railway Commission, resulting in the transfer of the Beaufort & Morehead to the North Carolina State Ports Authority. The Beaufort & Morehead ceased operations and last compensated employees on November 30,

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2002. Those operations were taken over by Carolina Rail Service, LLC, a covered employer under the Acts (B.A. Number 4576) (STB Finance Docket No. 34268).

Section 202.11 of the Board's regulations provides that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

The Beaufort & Morehead and the Railway Commission, through the cessation of operations, have lost the characteristics essential to the existence of an employer status. Accordingly, the Board holds that the Beaufort & Morehead and the North Carolina Ports Railway Commission ceased to be employers under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on November 30, 2002. Cf. Rev Ruling 82-99, 1982-2 C.B. 154, wherein the Internal Revenue Service ruled that a railroad ceases to be an employer subject to taxes under the Railroad Retirement Tax Act when the railroad's employees stop performing services in connection with the railroad's carrier activities.

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