B.C.D. 03-45

MAY 2 2 2003

EMPLOYER STATUS DETERMINATION
Nimishillen & Tuscarawas, LLC
N&T Railway Company, LLC

This is the determination of the Railroad Retirement Board concerning the continued status of Nimishillen & Tuscarawas, LLC (NT-LLC), B.A. No. 2273, and the current status of N&T Railway Company LLC (N&TRC) as employers 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).

Effective January 1, 2003, N&T RC began rail operations as a result of its acquisition of all rail line operations, including the transfer of all employees, of NT-LLC. NT-LLC ceased operations as of the close of business on December 31, 2002. Surface Transportation Board (STB) authority regarding this acquisition is set forth in STB Finance Docket No. 34243, decided January 8, 2003.

Section 202.11 (20 CFR 202.11) of the Board's regulations states 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.

Also, section 1(a)(1) of the RRA defines the term "employer" to include:

> (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)(i)].

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Section 1 of the RUIA contains the same definition.

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The information summarized above indicates that NT-LLC no longer possesses the characteristics of an operating railroad company. The Board, therefore, finds that effective with the close of business on December 31, 2002, the date on which it last operated, Nimishillen & Tuscarawas, LLC ceased to be a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Additionally, the Board finds that N&T Railway Company, LLC became a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act on January 1, 2003, the date on which it began operations. Lastly, the Board finds that N&TRC is the successor employer of the former NT-LLC for purposes of experience rating under the RUIA. See 20 CFR § 345.203.

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