B.C.D. 03-5

JAN 1 5 2003

EMPLOYER STATUS DETERMINATION
St. Marys Railroad Company
Durango Railroad Corporation

This is the determination of the Railroad Retirement Board concerning the status of Durango Railroad Corporation and the continuing status of St. Marys Railroad Company (SMR), B.A. No. 3557, 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). SMR was ruled to be an employer under the RRA and RUIA effective January 11, 1924.

According to Mr. Herbert Baez, the president and CEO of SMR, the railroad was merged into Gilman Paper Company on January 11, 1999. The surviving corporation was Gilman Paper Company. At the same time, Gilman set up a St. Marys Railroad, LLC and transferred all of the assets of St. Marys Railroad Company to St. Marys Railroad LLC. On December 17, 1999, St. Marys Railroad LLC was sold to Durango Paper Company. On January 18, 2000, Durango set up a new corporation, Durango Railroad Corporation. Since the creation of Durango Railroad Corporation, all the operations of St. Marys Railroad, LLC have been conducted under the name of Durango Railroad Corporation. The operations of St. Marys have not changed but it is now known as Durango Railroad Company d/b/a St. Marys Railroad Company. Reports are being filed by Durango Railroad Company. The last compensation to employees was paid by St. Marys Railroad Company on March 31, 2000.[1]

In view of the foregoing, it is the determination of the Railroad Retirement Board that the St. Marys Railroad Company ceased being an employer under the RRA and RUIA effective March 31, 2000, the last date its employees were compensated.

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[1] St. Marys reported the compensation and service of its employees through the first quarter of 2002. Thereafter, reports are being filed by Durango Railroad Corporation.

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In addition, the evidence of record establishes that Durango Railroad Corporation is a rail carrier operating in interstate commerce. Accordingly, it is determined that Durango Railroad Corporation became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective April 1, 2000, the date its employees were first compensated. [CF. Rev. Rul. 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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