B.C.D. 03-50

EMPLOYER STATUS DETERMINATION
Dakota Short Line, Inc.

JUN 1 0 2003

This is the determination of the Railroad Retirement Board concerning the status of Dakota Short Line, Inc., as an employer 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.).

In Surface Transportation Board Finance Docket No. 34043, decided May 31, 2001, Dakota Short Line filed a notice of exemption to sublease from the Napa to Platte Regional Railroad Authority and operate approximately 13.5 miles of rail line formerly operated by Dakota Southern Railway Company, a covered employer under the Acts (B.A. No. 2631). The line interchanges with the Burlington Northern Santa Fe.

Information regarding Dakota Short Line was provided by Leon E. Steege, President of the company. Mr. Steege advised the Board in June 2001 that the company had a lot of track work to do before operations could begin. In December 2002, Mr. Steege stated that operations had not yet begun and would not begin until at least April 2003. According to Mr. Steege, Dakota Short Line first had two employees on its payroll as of April 28, 2003, to begin work under a contract to supply a locomotive and train crew to spread 800 cars of ballast for a state contractor in connection with a state rehabilitation project.

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:

> (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;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

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The evidence of record establishes that Dakota Short Line is a carrier operating in interstate commerce. Accordingly, it is determined that Dakota Short Line became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of April 28, 2003, the date as of which it first hired employees.

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