B.C.D. 03-62

EMPLOYER STATUS DETERMINATION JUL 17 2003

Logistics Management Systems, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Logistics Management Systems, 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.).

Information regarding Logistics was provided by Thomas W. Flacke, formerly Vice President of Logistics and now Debtor-in Possession. According to Mr. Flacke, Logistics was incorporated and began doing business in May 1989. Logistics was placed into bankruptcy on May 15, 2002. On January 9, 2003, all of Logistics' assets were sold to a third party. In October 2002, it had 23 employees. As a result of the bankruptcy, it has no employees, assets, or operations.

Logistics was owned by Bangor & Aroostook Railroad Company, an employer under the Acts (B.A. No. 1101), now in bankruptcy. Logistics provided switching service at Skyway Industrial Park, Presque Isle, Maine. Mr. Flacke states that Logistics was a public warehousing company with 50 percent of its business being done with its affiliated carrier. Mr. Flacke stated that 80% of Logistics' time was spent on warehousing and that 76% of its revenue came from warehousing. In addition to warehousing, it unloaded trucks and railcars; transported products to their destination; and was a Surface Transportation Board certificated motor carrier[1]. Logistics did transloading of lumber, starch, chemicals, etc. It provided single source billing for its customers covering its services and the rail or truck freight bill. It owned a warehouse in Bangor, Maine, three operating over-the-load tractors, furniture, computers, various company cars and trucks, forklifts, and packaging equipment. It leased a locomotive at a nominal cost.

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[1] Although Logistics was a certificated motor carrier, the vast majority of its business consisted of its warehousing operations. In view of those operations, together with the switching service Logistics provided, we note that the trucking exception does not apply to Logistics.

The Bangor & Aroostook brought traffic to Skyway Industrial Park and Logistics was paid $100.00 per freight car, $50.00 per log car, and $25.00 for each intermodal trailer. Logistics paid for the entire move which included trucking, storage, handling, and rail transport. Its customers then paid on a per move basis.

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;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

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

Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

> * * * if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit,

> refrigeration or icing, storage, or handling of property transported by railroad. (20 CFR 202.7).

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. 20 CFR 202.11.

Initially, it should be noted that Logistics had a switching operation. Accordingly, it was a carrier-employer under the Acts. In addition, Mr. Flacke characterized Logistics as a public warehousing company, which provided warehousing to its controlling rail carrier. See Railroad Retirement Board v. Duquesne Warehouse Co., 149 F.2d 507 (D.C.Cir. 1945), aff'd 326 U.S. 446, 90 L.Ed. 192, 66 S.Ct. 238 (1946), where the Court of Appeals for the District of Columbia Circuit held that a warehouse corporation owned by a railroad and engaged in loading and unloading railroad cars and other handling of property transported by railroad, and in other activities which enabled the railroad to perform its rail transportation more successfully, was performing "services in connection with" the transportation of property by railroad and therefore an employer under the Railroad Unemployment Insurance Act.

Accordingly, it is determined that Logistics was an employer within the meaning of both section 1(a)(1)(i) and 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i) and (ii)) and the corresponding provisions of the Railroad Unemployment Insurance Act as of May 1, 1989, the first date of the month in which it

commenced operations. We find further, however, that Logistics ceased to be an employer effective January 9, 2003, the date as of which it sold all of its assets and terminated operations, thereby losing the characteristics essential to its employer status.

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