B.C.D. 03-79

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EMPLOYER STATUS DETERMINATION
ISG Railways Inc.
Brandywine Valley Railroad Corporation, LLC
Upper Merion & Plymouth Railroad Company, LLC
Patapsco & Back Rivers Railroad Company, LLC
Lake Michigan & Indiana Railroad Company, LLC
Cambria & Indian Railroad Company, LLC
Steelton & Highspire Railroad Company, LLC

This is the determination of the Railroad Retirement Board concerning the status of ISG Railways, 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.), and the continued status of Brandywine Valley Railroad Corporation, LLC (B.A. No. 3342), Upper Merion & Plymouth Railroad Company, LLC (B.A. No. 3370), Patapsco & Back Rivers Railroad Company, LLC (B.A. No. 4341), Lake Michigan & Indiana Railroad Company, LLC (B.A. No. 2281), Cambria & Indian Railroad Company, LLC (B.A. No. 2231), and Steelton & Highspire Railroad Company, LLC (B.A. No. 4349), as employers under those Acts.

ISG began operations May 7, 2003, and currently has 169 employees. In Surface Transportation Board Finance Docket No. 34344, ISG filed a notice of exemption to acquire and operate the rail lines and substantially all other assets of a number of railroads, including those listed above, which are stated to be switching and terminal properties. ISG interchanges with the Norfolk Southern Corporation, CSX Transportation, Inc., and Chicago South Shore & South Bend Railroad, covered employers under the Acts (B.A. Numbers 9408, 1524, 5325, respectively).

Under an asset purchase agreement with Bethlehem Steel Corporation, which then assigned the assets to ISG, ISG acquired the assets of Brandywine Valley, Upper Merion & Plymouth, Patapsco & Back Rivers, Lake Michigan & Indiana, Cambria & Indian, and Steelton & Highspire, all of which ceased operations as of May 7, 2003. ISG has hired a majority of the former employees of these railroads.

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).

ISG Railways Inc.
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The evidence of record establishes that ISG is a carrier operating in interstate commerce. Accordingly, it is determined that ISG is 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 May 7, 2003, the date as of which it commenced operations.

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.

Through the sale of their rail and other assets and their cessation of operations, the following railroads have lost the characteristics essential to the existence of an employer status: Brandywine Valley Railroad Corporation, LLC (B.A. No. 3342), Upper Merion & Plymouth Railroad Company, LLC. (B.A. No. 3370), Patapsco & Back Rivers Railroad Company, LLC (B.A. No. 4341), Lake Michigan & Indiana Railroad Company, LLC (B.A. No. 2281), Cambria & Indian Railroad Company, LLC (B.A. No. 2231), and Steelton & Highspire Railroad Company, LLC (B.A. No. 4349). Accordingly, the Board holds that those railroads ceased to be employers under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on May 7, 2003. 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.

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever