B.C.D. 04-36

JUL 23 2004

EMPLOYER STATUS DETERMINATION
N&T Railway Company, LLC
PAV Railroad, Inc.
Republic N&T Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the status of N&T Railway Company, LLC (N&T Railway), PAV Railroad, Inc. (PAV Railroad), and Republic N&T Railroad, Inc. (Republic N&T) as employers 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.). N&T Railway has previously been determined to be a covered employer, with service creditable beginning January 1, 2003. The status of Republic N&T and PAV Railroad has not previously been considered.

The evidence is that N &T Railway acquired from Nimishillen & Tuscarawas, LLC, two unconnected lines of rail in central Ohio in Stark County: the "Canton line" consisting of about 21 miles of track in Canton Township; and the "Massillon line" of about 15 miles of track in Perry Township. N&T Railway also leased a third line of 150 miles of track in the vicinity of the city of Lorain, Ohio, situated near Lake Erie. The rail lines serve steel processing plants operated at those locations by Republic Engineered Products, LLC, which is the parent company of N&T Railway, and interchange with CSX Transportation (BA 1524), Norfolk Southern Railway (BA 1525), Lake Terminal Railroad Co. (BA 4221), and Wheeling & Lake Erie Railway Co. (BA 3373). In Board Coverage Decision 03-45, the Board determined N&T Railway to be a rail carrier employer under the Acts effective with commencement of operations on January 1, 2003.

Republic Engineered Products filed for bankruptcy protection in October 2003, and solicited bids for its assets, including its steel plants and the rail lines of N&T Railway. As a result, it sold all assets to PAV Republic, Inc. The asset transfer was completed effective with close of business December 18, 2003, and N&T Railway had no assets or employees, and conducted no operations after that date.

On December 15, 2003, PAV Railroad, Inc., was incorporated as a Delaware corporation as a wholly owned subsidiary of PAV Republic. As part of the PAV Republic purchase of assets from the bankrupt company, on December 19, 2003, PAV Railroad received the assets of N&T Railway, and hired all of the railway's 91 employees. The Surface Transportation Board (STB) on December 19, 2003, approved a notice of exemption to allow PAV Railroad to operate the rail lines of N&T Railway. See: PAV Railroad, Inc.—Acquisition and Operation Exemption—Assets of N&T Railway Company LLC, Finance Docket No. 34450. On January 5, 2004, PAV Railroad then amended its articles of incorporation to change its name to Republic N&T Railroad, Inc.

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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;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C.§ 3231).

Regulations of the Board at 20 CFR 202.11 provide that the status of an employer as covered by the Acts terminates "whenever such company or person loses any of the characteristics essential to the existence of an employer status." Section 202.12(b) of the regulations further provides that evidence considered in determining that employer status ends includes cessation of business and the sale, transfer or lease of property, equipment or machinery essential to continuance of an employer function.

The Board finds that evidence of record establishes that N&T Railway Company, LLC, ceased to be a covered rail carrier employer effective with the close of business December 18, 2003, the date it disposed of all rail assets and no longer had employees. The Board further determines that PAV Railroad, Inc. became a rail carrier employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective December 19, 2003, the date as of which it began operating the rail lines received from N&T Railway. Cf. Rev. Rule. 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. Effective January 5, 2004, PAV Railroad changed its name to Republic N&T Railroad, Inc. The mere change of name has no effect on the continued status of the re-named corporation as a covered employer.

Section 8(a) of the RUIA (45 U.S.C. §358(a)) requires that employers covered under the Act shall make contributions based on compensation paid to their employees at a rate which shall take into consideration the benefits paid after December 31, 1989 under the RUIA to employees of that employer. See section 8(a)(15) of the RUIA (45 U.S.C.§ 358(a)(15)) and regulations of the Board at 20 CFR 345.302(f). Section 8(a)(19) of the RUIA (45 U.S.C.§ 358(a)(19)), and regulations of the Board promulgated

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pursuant thereto (20 CFR 345.204(a)), further provide that where property of an employer is sold or transferred to an entity which becomes an employer as a result of the sale, the individual employer record of such employer shall be prorated among the entities that receive the property and become an employer by reason of such transaction. However, where an employer abandons a line of track in accordance with the provisions of the Interstate Commerce Act, and a new entity is formed to operate or continue service over such line, then the Board will assign to such entity a new-employer contribution rate.

The evidence of record is that the property of N&T Railway was transferred to the company which is now named Republic N &T Railroad without abandonment of operations. Accordingly, pursuant to section 8(a)(19) of the RUIA, the Board finds that Republic N&T Railroad is the successor employer of N&T Railway LLC for purposes of contribution rates.

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