B.C.D. 04-45

SEP 17 2004

EMPLOYER STATUS DETERMINATION

Allegheny & Eastern Railroad, Inc. (B.A. No. 2254)
Bradford Industrial Rail, Inc. (B.A. No. 2259)
Buffalo & Pittsburgh Railroad, Inc. (B.A. No. 2249)
Pittsburgh & Shawmut Railroad, Inc. (B.A. No. 2270)
Allegheny & Eastern Railroad, LLC
Pittsburgh & Shawmut Railroad, LLC

This is the determination of the Railroad Retirement Board concerning the continuing status of the following employers covered 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): Allegheny & Eastern Railroad, Inc. (AERI) (BA No. 2254), Bradford Industrial Railroad, Inc. (BIRI) (BA No. 2259), Buffalo & Pittsburgh Railroad, Inc. (BPRI) (BA No. 2249), and Pittsburgh & Shawmut Railroad, Inc. (PSRI) (BA No. 2270). Coverage under the Acts began on November 25, 1992 for AERI, May 5, 1993 for BIRI, July 19, 1988 for BPRI, and April 27, 1996 for PSRI.

Allegheny & Eastern Railroad, LLC (AER/LLC) and Pittsburgh & Shawmut Railroad, LLC (PSR/LLC) have not heretofore been determined to be employers covered under the RRA and RUIA. This determination also concerns the employer status of AER/LLC and PSR/LLC.

According to Mr. Scott F. Ziegler, Vice President, Operational Finance, Genesee and Wyoming, Inc. (GWI) (B.A. No. 2639), AERI, BIRI, BPRI and PSRI, all wholly owned subsidiaries of GWI, merged on January 1, 2004, and BPRI was the surviving corporation. All employees of the aforesaid subsidiaries become employees of BPRI and, as a consequence of the merger, AERI, BIRI and PSRI ceased to exist as of January 1, 2004. The Surface Transportation Board (STB) authority for exemption of this merger is set forth at STB Finance Docket No. 34447, decided January 15, 2004.

In two related transactions, STB exemptions for which were filed concurrently with the merger, AER/LLC and PSR/LLC, newly formed limited liability corporations, became wholly owned subsidiaries of BPRI and acquired all of the non-real estate track-related property of BPRI. BPRI continues to own all of the real property, engines and rolling stock. Neither AER/LLC nor PSR/LLC have any employees or provide any railroad services. The function of AER/LLC and PSR/LLC, as holders of the track assets of BPRI, is strictly for certain favorable funding arrangements. See STB Finance Docket Nos. 34448 and 34449, decided January 15, 2004.

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.

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 [45 U.S.C.§ 231(a)(1)(i)].
>
> (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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

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).

In view of the foregoing, it is the determination of the Railroad Retirement Board that Allegheny & Eastern Railroad, Inc., Bradford Industrial Rail, Inc. and Pittsburgh & Shawmut Railroad, Inc. are terminated from coverage as employers under the RRA and RUIA effective January 1, 2004, the date upon which each one merged into the Buffalo & Pittsburgh Railroad, Inc. and, thereby, ceased to exist. The Buffalo & Pittsburgh Railroad, Inc. remains an employer under the Acts.

It is also the determination of the Railroad Retirement Board that Allegheny & Eastern Railroad, LLC and Pittsburgh & Shawmut Railroad, LLC are not employers covered under the RRA and RUIA because, in accordance with the definition of a covered employer under subsection (ii) of section 1(a)(1) of the RRA, they do not provide any service in connection with railroad transportation, but simply hold title to certain assets for favorable funding arrangements.

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