EMPLOYER STATUS DETERMINATION
Canon City & Royal Gorge Railroad, LLC

SEP 07 1999

This is the decision of the Railroad Retirement Board concerning the status of the Canon City & Royal Gorge Railroad, LLC (CCRG) as an employer 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).

Mr. David M. Ropchan, a manager of CCRG, provided information regarding the railroad. CCRG runs excursion trains through the Royal Gorge of the Arkansas River in Colorado. The train departs from near the old Santa Fe depot in Canon City in what is called the River Station Project. Upon leaving Canon City, the train immediately enters the Gorge; and about 10 miles further, emerges into an area called Parkdale, which contains a passing siding. The train then returns to Canon City. The total distance between Canon City and the Parkdale siding is 11.75 miles. The CCRG train has a capacity of about 320 seats, and it makes three round trips a day. The operation began May 15, 1999, and employees were first compensated as of May 1, 1999. The operation is seasonal, running from mid-May to Mid-October. Of CCRG's 50 employees, 20% are full time seasonal and 80% are part time seasonal. CCRG does not interchange with any other railroad.

Section 1(a)(1) of the RRA defines the term "employer" to include:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49

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Section 1 of the RUIA contains the same definition.

The information summarized above indicates that CCRG is a carrier by rail, since it operates a passenger railway. However, CCRG does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of Colorado. Thus, it is not within the jurisdiction of the Surface Transportation Board. See, 49 U.S.C. 10501(a)(2)(A) (the STB has jurisdiction over transportation between a place in a state and a place in the same or another state as part of the interstate rail network).

Canon City & Royal Gorge Railroad, LLC

The Board finds that since Canon City & Royal Gorge Railroad, LLC does not perform service as a rail common carrier in interstate commerce, it is not an employer under the RRA and the RUIA.

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