B.C.D. 01-57

JUL 05 2001

EMPLOYER DETERMINATION
Cooperstown & Charlotte Valley Railroad

This is a determination of the Railroad Retirement Board concerning the status of Cooperstown & Charlotte Valley Railroad (CCVR) 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).

Information concerning Cooperstown & Charlotte Valley Railroad was provided by Mr. Bruce J. Hodges, President & Executive Director of CCVR. According to Mr. Hodges, CCVR is a wholly-owned subsidiary of the Leatherstocking Railway Historical Society[1] (LRHS), a 501(c)(3) not-for-profit corporation incorporated by the New York State Department of Education. Mr. Hodges stated that on June 6, 1999, CCVR began providing tourist passenger train service. CCVR owns sixteen miles of rail track starting at the interchange point with the Delaware & Hudson Railway/CP Rail, in Cooperstown Junction, New York and ending in Cooperstown, New York. CCVR carries passengers on eight miles of the sixteen miles from April through the first week in December. CCVR has a volunteer crew of three and LRHS currently has four part-time employees.

Mr. Hodges stated that sometimes LRHS staff provides services for CCVR to maintain CCVR's tourist passenger schedule. According to Mr. Hodges, CCVR did not request or obtain operating authority from the Surface Transportation Board because it does not handle freight or interchange with a rail carrier. However, Mr. Hodges did state that CCVR interchanges with Delaware & Hudson Railway but only when receiving an occasional piece of equipment for CCVR's passenger operations.

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:

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[1] Mr. Hodges also noted that the Leatherstocking Railway Historical Society is also known as the Leatherstocking Chapter of the National Railway Historical Society and the museum division is called the Leatherstocking Railway Museum.

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> (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 contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board (STB) has jurisdiction over rail carrier:

> . . . transportation in the United States between a place in
>
> > (A) a State and a place in the same or another State as part of the interstate rail network. (49 U.S.C. § 10501(a)(2)(A)).

The evidence of record establishes that Cooperstown & Charlotte Valley Railroad operates a seasonal passenger excursion railroad entirely within one state. It does not operate as part of an interstate rail network, and would not be subject to STB jurisdiction under the provision quoted above.

The Board notes that the "interchange" between Cooperstown & Charlotte Valley and Delaware Hudson Railway is not a service which impacts interstate commerce. The evidence of record does not establish that Cooperstown & Charlotte Valley Railroad is a rail carrier operating

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in interstate commerce. Therefore, the Board finds that Cooperstown & Charlotte Valley Railroad is not an employer under the RRA and the RUIA.

Original signed by:

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