B.C.D. 02-31

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EMPLOYER STATUS DETERMINATION
Kansas Southern Railway

This is a determination of the Railroad Retirement Board concerning the status of the Kansas Southern Railway (KSR) 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).

According to a letter from Mr. Cecil R. Newman, a CPA employed by the KSR, the KSR began operations on December 11, 2000. KSR operates over 43 miles of track between Attica and Sun City, Kansas. KSR interchanges with the Burlington Northern Santa Fe (BNSF), a carrier subject to the Acts (BA No. 2796). The KSR operates three freight trains weekly over the entire line. Mr. Newman reported that no Surface Transportation Board (STB) permission was requested, since the KSR operates as a subcontractor of the V & S Railway Company.

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

The evidence of record establishes that KSR is a rail carrier operating in interstate commerce, since it interchanges with an interstate railroad, the BNSF. Accordingly, it is determined that KSR became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of

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the Railroad Unemployment Insurance Act effective December 11, 2000, the date it commenced operations.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever