B.C.D. 02-33

APR 26 2002

EMPLOYER STATUS DETERMINATION
Southwestern Railroad Company, Inc.

This is the decision of the Railroad Retirement Board concerning the status of Southwestern Railroad Company, Inc. (SWR) 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).

In March 1990, in Finance Docket No. 31613, SWR filed with the former Interstate Commerce Commission[1] a notice of exemption under 49 CFR 1150.31 to acquire and operate the Whitewater and Shattuck branches of the Atchison, Topeka and Santa Fe Railway Company (SF), which consist of 129 miles of track in New Mexico, Oklahoma, and Texas. The exemption became effective March 26, 1990. SWR has been pre-assigned a BA number (BA number 2775), and has reported service and compensation from January 1, 1990 through December 2001, the most recent year for which reports of service and compensation were due. See 20 CFR 209.8.

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, United States Code. [45 U.S.C. §231(a)(1)(i)].

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

The Board finds that SWR became a rail carrier employer under the RRA and the RUIA effective January 1, 1990, the date for which it first reported that it had compensated employees.

Original signed by:

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[1] The Surface Transportation Board now has jurisdiction over interstate rail transportation formerly held by the Interstate Commerce Commission.