B.C.D. 03-64

AUG 05 2003

EMPLOYER STATUS DETERMINATION
Lehigh Valley Rail Management, LLC
Keystone Railroad LLC
Conemaugh & Black Lick Railroad Company

This is the decision of the Railroad Retirement Board regarding the status of Lehigh Valley Rail Management, LLC, as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts, and the continued status of Keystone Railroad, LLC, and Conemaugh & Black Lick Railroad Company as employers under the Railroad Retirement and Railroad Unemployment Insurance Acts. Information regarding these companies was provided by August N. Fix, Jr., one of the owners and co-manager of Lehigh Valley.

Keystone Railroad, LLC, and Conemaugh & Black Lick Railroad Company are covered employers under the Acts (B.A. Nos. 4343 and 4320, respectively). On May 7, 2003, these rail lines were acquired by ISG Railways, Inc.[1] Although Mr. Fix refers to the acquisition as a merger of these and other railroads into ISG Railways, the Surface Transportation Board, in Finance Docket No. 34344, states that ISG Railways filed a notice of exemption to acquire, through an asset purchase agreement, the rail lines and substantially all other assets of Conemaugh & Black Lick and Keystone, and a number of other railroads. Lehigh Valley operates these rail lines for ISG Railways[2]. Lehigh Valley began operations May 1, 2003. All of the employees hired by Lehigh Valley were former employees of the two covered railroads (Keystone and Conemaugh & Black Lick). It has three employees operating the former Conemaugh & Black Lick, which interchanges with Norfolk Southern and CSXT, and seventeen operating the former Keystone, which interchanges with Norfolk Southern and Canadian Pacific.

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;

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).

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[1] The coverage status of ISG Railways, Inc., is currently being reviewed by the Board's Audit and Compliance Section.

[2] Lehigh Valley advises that it is attempting to acquire ownership of the lines from ISG Railways.

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The evidence of record establishes that Lehigh Valley is a carrier operating in interstate commerce. Accordingly, it is determined that Lehigh Valley is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of May 1, 2003, the date as of which it commenced operations.

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.

The Board holds that Conemaugh & Black Lick and Keystone ceased to be employers under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on May 7, 2003.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever