B.C.D. 02-28

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EMPLOYER STATUS DETERMINATION
SF&L Railway Company, Inc.

This is a determination of the Railroad Retirement Board concerning the status of SF&L Railway Company, Inc. (SF&L) 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 Surface Transportation Board (STB) Finance Docket No. 33995 decided January 30, 2001, SF&L filed a notice of exemption to acquire from Toledo, Peoria and Western Railway Corporation (TP & W) (B.A. No. 2346), an operating easement over, and the rail, ties, and improvements of, a 71.5 mile segment of track. The rail line extends between milepost 194.5 at La Harpe 61450 and milepost 123.0 at Peoria 61607, serving the intermediate points of Blandinsville 61420, Sciota 61475, Good Hope 61438, Bushnell 61422, New Philadelphia 61459, Smithfield 61477, Cuba 61427, Canton 61520, Glasford 61533, and Mapleton 61547 in Hancock, McDonough, Fulton and Peoria Counties, Illinois. According to the STB decision, TP & W would retain the realty underlying the line, subject to a permanent and unconditional easement to permit SF&L to fulfill its obligations as a railroad carrier. The STB decision noted that although SF&L will be responsible for rendering service, SF&L planned to employ TP & W as a contract operator.

Although early information indicated that TP & W would operate the line as a contract operator, a decision of the Surface Transportation Board (STB) issued December 26, 2001 cited an argument made by petitioners in that STB proceeding that TP & W would not be retained as a contract operator. See STB Finance Docket Nos. 33995 and 33996, decided December 26, 2001. The latest information in the record, a letter from Steven Van Wagenen, transmitted by telefax to the Board on January 18, 2002, makes no mention of TP & W as a contract operator of the line and, in fact, states that SF&L Railway hired three employees who began working December 10, 2001. That letter also describes rail operations as being conducted by SF & L Railway. We

will therefore address the issue of SF&L Railway's coverage based on that most recent letter.

Information regarding SF&L was provided by Steven Van Wagenen, Assistant Vice President, of SF&L in the letter of January 18, 2002 cited in the preceding paragraph. According to Mr. Van Wagenen, Mr. Kern W. Schumacher and Mr. Morris H. Kulmer are the owners of SF&L. Mr. Morris H. Kulmer serves as SF&L's Chief Executive Officer. Mr. Van Wagenen stated that SF&L began rail operations on December 12, 2001; however, it first compensated its three employees on December 10, 2001. He stated that SF&L is a freight railroad that primarily hauls bridge traffic (grain, railway wheels, coal and other miscellaneous traffic) between TP & W and Keokuk Junction Railway (KJRY) (B.A. No. 3755). Mr. Van Wagenen further stated that SF&L also handles a limited amount of originating (grain) and terminating (stone) traffic. Mr. Van Wagenen stated that SF&L anticipates handling approximately 2000 carloads per year. SF&L interchanges with TP & W and KJRY, both covered employers under the Acts.

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 SF&L Railway Company, Inc., is a rail carrier operating in interstate commerce. Accordingly, it is determined that SF&L Railway Company, Inc., became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective December 10, 2001, the date its employees were first

compensated. [CF. Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

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