B.C.D. 04-35

EMPLOYER STATUS DETERMINATION
New Jersey Rail Carrier LLC

JUL 21 2004

This is the determination of the Railroad Retirement Board concerning the status of New Jersey Rail Carrier, LLC (NJRC), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding NJRC was provided by Darren Rizzo, Managing Member. According to Mr. Rizzo, NJRC began doing business May 1, 2004. NJRC reported that it has no employees as of yet. The two managing members are the only individuals working on the NJRC.

In Surface Transportation Board Finance Docket No. 34392, NJRC filed a notice of exemption to acquire by lease and operate approximately one-half mile of rail line formerly known as Columbia Terminals. Mr. Rizzo advised that NJRC will interchange with the Norfolk Southern or CSXT at NJRC's gate, and then will place the cars into position to be offloaded or loaded. NJRC will then reassemble the cars and interchange them with the main line carrier.

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).

The evidence of record establishes that NJRC is a carrier operating in interstate commerce. Accordingly, it is determined that NJRC 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, 2004, the date as of which it commenced operations.

Original signed by:

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