B.C.D. 04-37

EMPLOYER STATUS DETERMINATION
Southern Freight Logistics LLC
doing business as Southern Freight Railroad

JUL 28 2004

This is the determination of the Railroad Retirement Board concerning the status of Southern Freight Logistics LLC (SF Logistics) doing business as Southern Freight Railroad Corporation (SF Railroad), 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.). The status of this company has not previously been considered.

The evidence is that SF Logistics is a tenant in the "Heritage Center" of the East Tennessee Technology Park, located near Oak Ridge, Tennessee. The Park, which is owned by the United States Department of Energy, formerly operated as the Oak Ridge K-25 Site for production of components of nuclear weapons. The existing structures are now operated as an industrial park by Heritage Center LLC, a subsidiary of the Community Reuse Organization of East Tennessee (CROET). SF Logistics was granted an exemption by the Surface Transportation Board (STB) allowing it to lease from CROET and to operate a total of 14.5 miles of rail line consisting of 7 miles of rail from an interchange with the Norfolk Southern Railway at Blair, Tennessee to the Technology Park, and 24 industrial spurs located within the Park which total an additional 7.5 miles of track. See: Southern Freight Logistics LLC—Lease and Operation Exemption—Community Reuse Organization of East Tennessee, STB Finance Docket No. 33392, 62 Fed. Reg. 26848, May 15, 1997. The STB notice stated the transaction between SF Logistics and CROET was to be concluded on or about May 2, 1997.

SF Logistics operates five businesses: Southern Freight Express and Lakeway Trucking carry freight by motor truck; Southern Air Logistics transports passengers and freight by air; and Southern Freight Warehousing and Distribution operates a warehouse and distribution center in the Heritage Center. As noted above, SF Logistics also provided rail freight service to tenants of the Technology Park under lease with CROET, doing business as SF Railroad. By letter dated February 10, 2004, the secretary for SF Logistics stated that two SF Logistics employees operate one leased locomotive one day per week. The balance of time these employees drive trucks. SF Logistics states that it also has two clerical employees, and four full time truck drivers, for a total of eight employees.

CROET later filed a notice of exemption with the STB stating it has formed Heritage Railroad Corporation (Heritage RR) to provide rail service to Heritage Center tenants. See: Heritage Railroad Corporation—Lease and Operation Exemption—Rail Line of United States Energy Department, STB Finance Docket No. 34372, July 16, 2003, 68 Fed. Reg. 44140. As stated in that notice, Heritage RR entered into an agreement September 30, 2000 allowing SF Railroad to operate freight service until September 15, 2005. Although the notice of exemption further states that Heritage RR notified SF Railroad that the agreement would terminate and Heritage RR would assume operation September 14, 2003, the letter dated February 10, 2004 states the SF Railroad continues to conduct operations.

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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 (45 U.S.C. § 351) contains essentially the same definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C.§ 3231). Regulations of the Board at 20 CFR 202.3(a) further provide that where a company principally engages in business other than rail carrier business, but engages in some rail carrier business, the Board will consider whether some identifiable and separable enterprise conducted by the company may be considered to be the employer covered by the Acts.

The evidence of record establishes that SF Logistics d/b/a SF Railroad has been operating as a rail carrier in interstate commerce since concluding a lease agreement with CROET on May 2, 1997. However, SF Logistics' primary business is shipping freight by truck or airplane or in storage of freight in connection with those activities. Only two of the eight employees work in the rail carrier operation part-time. Moreover, SF Logistics operates under the rubric SF Railroad when conducting these rail carrier operations. Accordingly, it is determined that SF Logistics d/b/a SF Railroad became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective May 2, 1997, the date it began operations under the lease with CROET. Pursuant to section 202.3(a) of the regulations, SF Logistics is an employer only with respect to the rail carrier operations conducted as SF Railroad under the agreement with CROET and Heritage RR.[1]

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever

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1 The Board notes that if Heritage RR meets the requirements set forth by the Board in *Railroad Ventures, Inc.*, B.C.D. 00-47, it is also a covered rail carrier employer under the Acts by reason of its lease of a line of rail to SF Railroad. The Board will consider the status of Heritage RR in a separate decision.