

**B.C.D. 11-62**  
**EMPLOYER STATUS DETERMINATION**  
**Honey Creek Railroad Company, Inc.**

**July 12, 2011**

This is the determination of the Railroad Retirement Board concerning the continuing status of Honey Creek Railroad Company, Inc. (Honey Creek) (B.A. No. 5330) 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). Honey Creek was found to be a rail carrier employer effective October 1, 1993. Honey Creek acquired and operated approximately 5.95 miles of rail line owned by Conrail in Henry County, Indiana, and also owned and operated six miles of track in Rushville, Indiana, which interchanged with CSX. Honey Creek's main function was described as moving grain from elevators to its interchange point with carriers operating in interstate commerce<sup>1</sup>.

Letters requesting information about Honey Creek were sent to Mr. William E. Smith, CEO of Honey Creek, on December 1, 2010, and January 22, 2011. In a letter dated February 3, 2011, Attorney Richard R. Wilson, advised the agency that:

\* \* \* on October 28, 2010, Honey Creek Railroad, Inc. was acquired by HC Railroad, LLC under authority issued by the Surface Transportation Board \* \* \* Accordingly, further inquiries regarding the employer status of Honey Creek Railroad Company should be referred to Andrew P. Goldstein, Esq. who now represents Honey Creek Railroad, Inc.

In Surface Transportation Board Finance Docket No. FD 35434, HC Railroad, LLC (HC) filed a notice of exemption to acquire and operate the 6.4 miles of rail line owned by Honey Creek in Rushville, Indiana, which interchanges with CSX. According to Finance Docket No. FD 35434, HC stated that the trackage serves only one shipper, Morristown Grain Company, Inc., which was to be separately purchased by an affiliate of HC.

Additional information about Honey Creek was provided by Attorney Andrew P. Goldstein, Counsel for HC Railroad, LLC<sup>2</sup>, indicating that HC acquired Honey Creek's rail line by asset purchase, did not hire any of the employees of Honey Creek, and also acquired rail equipment from Honey Creek.

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

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<sup>1</sup> By letter dated March 30, 2005, Attorney Wilson advised the agency that Honey Creek had filed a notice to abandon its entire line of railroad between Sulphur Springs and New Castle, Indiana. At that time, Honey Creek continued to provide intraplant switching operations at the Morristown Grain Company elevator in Rushville, Indiana. Because Honey Creek did not cease all of its operations at that time, and continued to operate as an employer under the Acts, no further action was taken regarding its status as an employer under the Acts.

<sup>2</sup> The coverage status of HC Railroad, LLC is addressed in a separate decision.

characteristics essential to the existence of an employer status.

Based on the information set forth above, it is clear that the character of Honey Creek as a railroad no longer exists inasmuch as its operating track and railroad assets have been sold. Therefore, it is the determination of the Railroad Retirement Board that Honey Creek Railroad, Inc. ceased being an employer under the RRA and RUIA on October 28, 2010, the date on which it sold its operating track and assets.

Original signed by:

FOR THE BOARD  
Martha P. Rico  
Secretary to the Board