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EMPLOYER STATUS DETERMINATION
Kingwood Northern, Inc. d/b/a/ West Virginia Northern Railroad (KNI)

This is the decision of the Railroad Retirement Board concerning the status of Kingwood Northern, Inc. (KNI) d/b/a/ West Virginia Northern Railroad 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 Number 32448, filed January 7, 1994, Kingwood Northern, Inc. (KNI) filed a verified Notice of Exemption to acquire and operate West Virginia Northern Railroad, Ltd.'s (WVNR) (former B. A. No. 2342) entire line of railroad including all associated branch lines between Tunnelton and Kingwood, a distance of approximately 10.7 miles in Preston County, West Virginia. In Board Coverage Decision 95-38, WVNR was found to have ceased being an employer under the RRA and RUIA effective April 29, 1994, the date on which it sold all of its assets to KNI. According to the STB decision, KNI d/b/a WVNR would become a Class III railroad when it commenced service upon consummation of the sale of the line. In addition, KNI was assigned reporting marks by the Association of American Railroads (AAR) effective January 1, 1999.

Mr. John Garner, II, Vice-President of Operations for KNI, provided information regarding the railroad. Mr. Stanley M. Hostler is President and Chief Executive Officer. According to Mr. Garner, KNI is strictly a tourist railroad and carries no freight. He stated that KNI's objective was to "preserve what is left of the history of mountain railroading and coal history...in Preston County." Mr. Garner stated that in January 1999, KNI "started to activate the basics of becoming a freight railroad" based upon a potential business venture to haul freight. That venture did not come to fruition and KNI "immediately dropped everything," according to Mr. Garner. Mr. Garner stated further that he did not know that KNI had obtained STB authority to operate and interchange with CSXT. He explained that his employer, who is the present owner, "bought out the previous owner in April 1998." Mr. Garner also stated that the previous owner took all records when he left. Mr. Garner stated his belief that passenger excursion service began in August 1994 and that there are no shippers on the rail line. In fact, the last shipper "closed its doors in September of 1989." Mr. Garner also explained that KNI sought AAR markings in February, 1999 when it thought it might obtain freight business. At this

time, KNI remains a tourist railroad which hauls only passengers on a 2 ½ hour trip from Kingwood to Tunnelton and back. KNI reports that it has two compensated employees who were hired on April 1, 1998, according to Mr. Garner.

According to its passenger schedule, KNI operates an "exciting ride from the past through majestic mountains...." The passenger schedule refers to KNI as "a scenic and historic railroad for everyone to enjoy." The passenger schedule indicates that KNI operates three-hour round trips (including a ½ hour layover in Tunnelton) on a schedule Monday and Friday at 12:00 P.M. and Saturdays and Sundays at 11:00 A.M. and 3:00 P.M., May 1st through October 30th. KNI has an inactive interchange with CSXT.

Section 1(a)(1) of the RRA defines the term "employer" to include:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49 [45 U.S.C. §231(a)(1)(i)].

* * * * *

Section 1 of the RUIA contains the same definition.

The information summarized above indicates that KNI is a carrier by rail, since it operates a passenger railway. However, KNI does not operate, and has never operated, as a common rail carrier in interstate commerce. Rather, it provides excursion service solely within the State of West Virginia. Thus, it is not within the jurisdiction of the Surface Transportation Board (STB). See, 49 U.S.C. §10501(a)(2)(A) (the STB has jurisdiction over rail carrier transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network).

The Board finds that since Kingwood Northern, Inc. d/b/a/ West Virginia Northern Railroad does not perform service as a rail common carrier in

interstate commerce, and that it is therefore not an employer under the RRA and the RUIA.

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