B.C.D. 00-16

EMPLOYER STATUS DETERMINATION
Nimishillen & Tuscarawas Railway Company (N&T)
Nimishillen & Tuscarawas, LLC (NT-LLC)

MAY 1 0 2000

This is the determination of the Railroad Retirement Board concerning the continued status of Nimishillen & Tuscarawas Railway Company (N&T), B.A. No. 3278, and the current status of Nimishillen & Tuscarawas, LLC as employers 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).

Information obtained in response to a coverage investigation of N&T indicates that N&T was a switching line that operated approximately 24.7 miles of rail line in Perry and Canton, Ohio. Information obtained indicates that Republic Engineered Steels, Inc. (RESI), a Delaware Corporation, of which N&T was a wholly-owned subsidiary, and Republic Technologies International, LLC (RTI), a Delaware limited liability company, entered into a merger agreement in accordance with the requirements of Section 18-209 of the Delaware Limited Liability Company Act, and in accordance with Section 264 of the Delaware General Corporation Law (DGCL), to merge N&T into Nimishillen & Tuscarawas, LLC (NT-LLC) effective August 13, 1999. According to the Certificate of Merger filed with the Delaware Secretary of State, the merger agreement was adopted by written consent of the sole stockholder of N&T in accordance with Section 228 of the DGCL on that date. No Surface Transportation Board decision was available regarding the merger.

From the information obtained regarding N&T, it appears that all railroad trackage operations, and employees have been transferred to NT-LLC, the surviving entity.

Section 202.11 (20 CFR 202.11) of the Board's regulations states that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

Also, 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)].

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Section 1 of the RUIA contains the same definition.

The information summarized above indicates that N&T no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective with the close of business on August 13, 1999, the date the merger was filed with the State of Delaware, Nimishillen & Tuscarawas Railway Company ceased to be a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Additionally, the Board finds that Nimishillen & Tuscarawas, LLC became a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective that same date. Lastly, the Board finds that NT-LLC is the successor employer of the former N&T for purposes of experience rating under the RUIA. See 20 CFR §345.203.

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