B.C.D. 00-38

SEP 19 2000

EMPLOYER STATUS DETERMINATION
Respondek Railroad Corporation (RRC)

This is a determination of the Railroad Retirement Board concerning the status of the Respondek Railroad Corporation (RRC) 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 Board previously determined in B. C. D. 96-13, that RRC was not a rail carrier employer under the Acts and further, that service performed by employees of RRC, under contract with the SEMO Port Railroad, Inc. (SEMO) (B. A. No. 2870), was creditable as service as employees of SEMO. RRC contacted the Board's Office of Audit and Compliance regarding a change in its business operations.

Information regarding RRC was furnished by Terry L. Respondek , owner and Chief Executive Officer of RRC. According to Mr. Respondek , RRC does interplant switching for Equillon (Shell Oil) and B. P. Amoco Oil in Wood River, Illinois and G. E. Plastic at Burkville, Alabama. Mr. Respondek stated that he and his brother, Jerry Respondek, together no longer operate SEMO in Scott City, Missouri. Jerry Respondek took over the entire operation at the Semo Port and now operates his own private company under the name Motive Rail, according to Mr. Respondek.[1] Mr. Respondek indicated that in August of 1999, RRC was awarded a contract to operate about 1½ miles of rail line for the Bi State Development Agency (BSDA), a non-carrier employer under the Acts. See Legal Opinion L-91-86, Notice No. 91-42. Mr. Respondek stated that RRC is not "paid anything by the railroad for the handling of railcars," but that RRC "bill[s] the customers on the line directly."

Additional information regarding RRC was furnished by Debby Respondek, Office Manager of RRC. According to Ms. Respondek, RRC has a total of nine employees who were first compensated on August 10, 1999. Ms. Respondek stated that RRC has individually contracted with each of the shippers on the line by service agreements to provide service "cost structured according to the volume of rail cars moved per year." RRC interchanges with the Union Pacific Railroad Company (B. A. No. 1715).

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.

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[1]Audit and Compliance is investigating SEMO and Motive Rail.

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The evidence of record establishes that RRC now operates as a rail carrier subject to the jurisdiction of the Surface Transportation Board. Accordingly, it is determined that Respondek Railroad Corporation became 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 effective August 3, 1999, the date on which it commenced railroad operations. The Board also finds that RRC is a new rail carrier employer for purposes of experience rating under the RUIA. See 20 CFR §345.304.

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