B.C.D. 01-18

FEB 09 2001

EMPLOYER STATUS DETERMINATION
IRW Railway, LLC (IRWR)

This is the determination of the Railroad Retirement Board concerning the status of IRW Railway, LLC (IRWR) 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 No. 33919, decided on September 8, 2000, IRWR filed a notice of exemption to acquire the West Tennessee Railroad Corporation (BA No. 2568) (WTR) line from the Gibson County Railroad Authority (GCRA). The WTR line extends from milepost 394.5, north of Carol, Tennessee, to milepost 431.31, at Kenton, Tennessee, a distance of 36.8 miles. According to the STB decision, IRWR planned to acquire ownership of the title to the lands and track of the WTR line.

According to a footnote in the STB decision in Finance Docket No 33919, the rail operation obligations of GCRA were to be transferred to IRWR and WTR would continue to operate the rail line. This notice of exemption also related to Finance Docket No. 33918 in which Henry G. Hohorst, Bruce Hohorst, Joan D. Hohorst, and Anthony M. Linn sought an exemption to continue in control of IRWR after IRWR acquired the WTR line.

The STB decision in Finance Docket No. 33918 noted that these same four individuals own a controlling interest in South Central Rail Group, Inc., which owns the WTR. The same individuals also hold a controlling interest in the Tennken Railroad Company (BA No. 3594).

Information regarding IRWR was furnished by Mr. Bruce Hohorst, President for WTR. Mr. Hohorst stated that IRWR is a limited liability corporation and as such does not have a CEO. IRWR is currently owned by himself with 83% of the shares, Anthony Linn with 16%, and Henry Hohorst holding 1% of the outstanding shares. According to Mr. Hohorst, IRWR was formed August 14, 2000 and reportedly has no employees. Mr. Hohorst stated that WTR continues to operate the rail line exactly as it did when the rail line was owned by the GCRA. WTR now pays IRWR for use of the rail line, according to the information submitted by Mr. Hohorst. IRWR interchanges with CSXT and Norfolk Southern.

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;

IRW Railway, LLC (IRWR)

Sections 1(a) and (1)(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C § 3231).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this test to the facts of IRWR, the Board determines that IRWR is a covered rail carrier employer under the Acts. IRWR currently conducts no common carrier operations on its own, but contracts its trackage for use by WTR. Mr. Hohorst stated that IRWR derives its income from the leasing of trackage rights. The evidence shows that IRWR is under common ownership with the WTR and with the Tennken Railroad Company. In our decision in B.C.D. No. 00-47, we noted that an entity that is affiliated through common ownership with other for profit carriers is presumed to have as a primary business purpose to profit from the ownership of the line. Accordingly, we do not have to reach the other two considerations, since all three need to be present to remain outside the coverage of the RRA and the RUIA.

For the reasons explained above, the Board finds that IRWR became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning August 14, 2000, the date it was formed.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever