B.C.D. 01-39

APR 3 0 2001

EMPLOYER STATUS DETERMINATION
Minnesota Southern Railway, Inc. (MSRY)

This is a determination of the Railroad Retirement Board concerning the status of the Minnesota Southern Railway, Inc. (MSRY) 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.). MSRY has been preassigned B. A. No. 2655.

In Surface Transportation Board (STB) Finance Docket 33970, decided December 8, 2000, MSRY filed a verified notice of exemption to lease and operate approximately 41.44 miles of rail line owned and operated by Buffalo Ridge Regional Rail Authority (BRRA) between milepost 0.0 at Agate, Minnesota, and milepost 41.44, at Manley, Minnesota.[1] MSRY entered into a lease and operating agreement with BRRR on November 27, 2000, acquiring its lease rights and obligations in order to provide continuous rail service to shippers located along the rail line.

Information regarding MSRY was furnished by Mr. Arnold T. Polanchek. Mr. Polanchek reported that MSRY began operations on November 27, 2000 and has one full time employee who was first compensated on January 1, 2001. Mr. Polanchek stated that MSRY also "uses part-time seasonal employees as needed." According to Mr. Polanchek, MSRY "is a Class III carrier that provides rail transportation services to a predominantly agricultural area." Mr. Polanchek reported that MSRY's traffic consists primarily of corn, soybeans, ethanol, and DDG and its inbound traffic is primarily fertilizers. Mr. Polanchek further stated that the projected annual volume of freight traffic is approximately 600 carloads. MSRY interchanges with BNSF at Manley, Minnesota and the UPRR at Worthington, Minnesota.

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] The Board's Audit and Compliance Section is investigating the status of Buffalo Ridge Regional Rail Authority (BRRA).

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The evidence of record establishes that MSRY is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Minnesota Southern Railway, Inc. (MSRY) 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 November 27, 2000, the date as of which it commenced operations.

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