B.C.D. 01-72

AUG 2 7 2001

EMPLOYER STATUS DETERMINATION
Nobles Rock Railroad, Inc. (NRRR) (B.A. No. 2650)

This is the determination of the Railroad Retirement Board concerning the continued status of Nobles Rock Railroad, Inc. (NRRR) (B.A. No. 2650) 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 Board Coverage Decision No. 99-41, NRRR was previously found to be a covered rail carrier employer under the RRA and RUIA effective December 21, 1998, the date on which it commenced railroad operations.

In Surface Transportation Board (STB) Finance Docket Number 33925, decided September 14, 2000, Buffalo Ridge Regional Railroad Authority (BRRRA)[1] filed a verified notice of exemption to operate over its own rail line between milepost 0.0, at or near Agate, Minnesota, and milepost 41.44, at or near Manley, Minnesota, a distance of approximately 41.44 miles. The STB decision noted that BRRRA stated that NRRR "appears to have become insolvent or close to insolvency" and that termination of its [BRRRA's] lease to NRRR appeared to be imminent. BRRRA notified the STB that it (BRRRA) intended to operate the line itself.

Information regarding NRRR was furnished by Mr. Timothy S. Tennant, President of NRRR. According to Mr. Tennant, NRRR ceased operations on July 23, 2000 when its operating lease with BRRRA was terminated. Mr. Tenant stated that BRRRA last compensated NRRR employees on NRRR's account in late July, 2000, on account of BRRRA retaining NRRR's freight revenues. Mr. Tennant provided information which shows that the assets of NRRR were reclaimed by BRRRA as a result of NRRR's failure to continue operations and to operate in accordance with its lease because of NRRR's insolvency. Mr. Tennant

[1] Buffalo Ridge Regional Railroad Authority is currently being reviewed by the Board's Audit and Compliance Section.

Nobles Rock Railroad, Inc. (NRRR) (B.A. No. 2650)

stated that NRRR's corporate charter had not been renewed for 2001 and "therefore the corporation has been dissolved in this fashion."

Additional information regarding BRRRA's assumption of the terminated lease with NRRR was provided by Mr. Donald R. Klosterbuer, Executive Secretary of BRRRA. According to Mr. Klosterbuer, BRRRA commenced operations on or about July 24, 2000 and terminated on or about November 30, 2000. Mr. Klosterbuer stated that BRRRA became involved in the operation of the line only for a brief period as a result of the failure of its prior lease operator, NRRR, to continue operations and to operate in accordance with the lease because of NRRR's insolvency. As stated by Mr. Klosterbuer, operations by the BRRRA were commenced only for the purpose of providing rail service to the rail customers during the interim period until a new operator was obtained. Mr. Klosterbuer stated that after November 30, 2000, railroad operations were assumed by Minnesota Southern, Inc.[2] (MSI) (Pre-assigned B.A. No. 2655), the present operator of the line.

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)].

* * * * *

Section 1 of the RUIA contains the same definition.

[2] Minnesota Southern, Inc. is currently being reviewed by the Board's Audit and Compliance Section.

Nobles Rock Railroad (NRRR) (B.A. No. 2650)

The information summarized above indicates that, due to the cessation of operations by NRRR and the effective dissolution caused by the non-renewal of its corporate charter, NRRR no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective with the close of business on July 23, 2000, the date on which NRRR ceased operation, the Nobles Rock Railroad, Inc. ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

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