B.C.D. 01-74

SEP 2 0 2001

EMPLOYER STATUS DETERMINATION
San Diego and Arizona Eastern Railway Company

This is a determination of the Railroad Retirement Board concerning the continued status of San Diego and Arizona Eastern Railway Company (SD&AE) (BA No. 2738) 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 SD&AE was a wholly owned subsidiary of the Southern Pacific Transportation Company until November 1, 1979, when the San Diego Metropolitan Transit Development Board (MTDB) purchased the stock of SD&AE, becoming the sole owner thereof. The property was acquired for use in connection with a public transit system. To conduct the freight operations of the SD&AE, MTDB contracted with Kyle Railways, Inc. (Kyle) (BA No. 9003), which in turn created a subsidiary for freight operation purposes, namely, the San Diego & Arizona Eastern Transportation Company (BA No. 2751). In 1984, MTDB sought a new operator.[1] In Finance Docket No. 30457, decided August 9, 1984, the ICC authorized San Diego and Imperial Valley Railroad (SD&IV) (BA No. 3758) to conduct railroad operations over the line.[2] In a footnote to a subsequent decision, the ICC noted that SD&AE, as owner of the line, holds the residual common carrier obligation to provide rail service on the line. (See ICC Finance Docket 30457, decided September 20, 1985, footnote 8).

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

[1] In 1984, Kyle sought abandonment and discontinuance of service of the line, which was denied by the ICC in Decision AB-16 (subpart No. 1).

[2] Footnote 5 of the ICC decision indicated that formal ICC authority for San Diego and Arizona Eastern Transportation Company to discontinue operations would not be required once a replacement carrier was permitted to institute operations, since no interruption in service would result. In B.C.D. 92-52, the Board determined that San Diego & Arizona Eastern Transportation Company ceased to be a rail carrier employer under the Acts administered by the Board effective November 30, 1984.

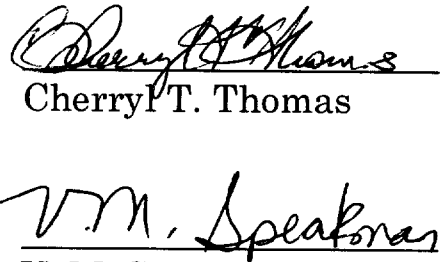
operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. 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 exits: 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. As outlined in detail below, applying this three-part test to the facts of SD&AE, the Board determines that SD&AE is no longer a covered employer under the Acts.

In a letter dated April 30, 2001, Mr. Jack Limber, Deputy General Manager and General Counsel of MTDB, advised that, since 1979, SD&AE has been reconstituted as a Nevada nonprofit corporation, in which MTDB as public agency is its sole member. As a nonprofit corporation, SD&AE clearly satisfies the first prong of the test, that is, its primary business purpose is not to profit from railroad activities. According to Mr. Limber, SD&AE functions simply as a land-holding company over which various short line operators have been authorized to operate the freight services. Consequently, SD&AE does not retain the capacity to operate a rail line, satisfying step two of the test. Finally, the third step of the test is satisfied, as SD&IV (BA No. 3758), the current operator of the rail line, is already covered under the Acts administered by the Board. (See Legal Opinion L-84-138, issued November 8, 1984.)

The Board therefore finds that effective with the close of business April 30, 2001, the San Diego & Arizona Eastern Railway Company ceased being a covered employer under section 1(a)(1)(i) of the Railroad

San Diego and Arizona Eastern Railway Company

Retirement Act (45 U.S.C. § 231(a)(1)(i) and the corresponding provision of the Railroad Unemployment Insurance Act.[3]



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[3] The date of April 30, 2001 was selected as the termination effective date as it was in a letter dated April 30, 2001 where the Board was first advised that SD&AE had been reconstituted as a nonprofit corporation.