B.C.D. 01-81

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EMPLOYER STATUS DETERMINATION
Central Gulf Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Central Gulf Railway, Inc., 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.).

Information regarding Central Gulf was provided by Kevin M. Wild, Vice President of that company. According to Mr. Wild, Central Gulf began doing business January 26, 2001. Mr. Wild states that Central Gulf has no employees, having contracted with the Terminal Railway (a division of Alabama State Docks), a covered employer under the Acts (B.A. No. 4535), to operate the railroad. The operation consists of a "rail [-] water - rail service [between] Mobile, Alabama and Coatzacoalcos, Mexico. The Terminal Railway performs the rail switching operations in Mobile. According to the information provided, the switching operations in Mexico and water portion of the operation are also performed by contractors.

In Surface Transportation Board Finance Docket No. 33891, Central Gulf filed a notice of exemption to lease certain rail lines from the Terminal Railway, and operate approximately 4.6 miles of rail line. It interchanges with Burlington Northern Santa Fe, Canadian National, 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 * * *.

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

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The Board notes that in its decision regarding 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. No. 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. There is no evidence in the record to suggest that Central Gulf Railway is not intended to profit from its operations. Accordingly, the exception does not apply, and it is determined that Central Gulf is 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 as of January 26, 2001, the date as of which it commenced operations.

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