B.C.D. 02-2

JAN 1 6 2002

EMPLOYER STATUS DETERMINATION
Carrizo Gorge Railway, Inc. (CZRY)

This is the decision of the Railroad Retirement Board concerning the status of Carrizo Gorge Railway, Inc. (CZRY) 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 Number 34078, decided August 9, 2001, CZRY filed a verified notice of exemption to operate approximately 6.2 miles of rail line owned by San Diego and Arizona Eastern Railway Company (SD&AE) (B.A. No. 2738) and controlled through management by San Diego & Imperial Valley Railroad Company, Inc. (SDIY) (B.A. No. 3758). The rail line extends from the International Border between the United States and Mexico, milepost 59.60 at Division, California, and milepost 65.80 at Campo, California.

Mr. Thomas F. McFarland, Attorney for CZRY, provided information regarding the railroad. CZRY is owned by Mr. Gary R. Sweetwood, Mr. Benny L. Wright, Mr. Vince J. Crisci, Jr., and Mr. John H. Zentmyer. Mr. Sweetwood is the Chief Executive Officer of CZRY. According to Mr. McFarland, "CZRY's operating agreement covers 44 miles of track in Mexico terminating on its west end at the international border between Tijuana, Baja California, Mexico and San Ysidro, California; terminating on the east end at the international border between Tecate, Baja California, Mexico and Tecate, California." According to information provided by Mr. McFarland, CZRY assumed freight operations on the Mexican portion of what was formerly the SD&AE in the United States and the Tijuana y Tecate (T&T) in Mexico. Prior to July 1, 2001, and since 1984, the freight operator for this portion of the rail line was SDIY. Mr. McFarland stated that SDIY exchanges cars at its interchange point in San Diego with the Burlington Northern and Santa Fe Railroad (BNSF). According to Mr. McFarland, SDIY "will retain operating authority in the United States and will continue providing transportation services to its customers on the west end of the rail line." Mr. McFarland stated that CZRY "operates in the United States between Division, CA and Campo, CA pursuant to a detour agreement and interchange agreement with San Diego & Imperial Valley Railroad (SDIY)." Mr. McFarland stated that CZRY "expects to initially move 300 to 400 carloads per month through interchange with SDI[Y] and an additional 300 captive carloads between Tecate, B.C., Mexico and Campo, California." Additionally, Mr. McFarland stated that CZRY operates a tourist train several times a month between Campo, California to Tecate, B.C. , Mexico under an agreement with the San

Diego Railroad Museum. CZRY has eighteen employees who were first compensated on July 1, 2001, the date CZRY commenced operations, according to Mr. McFarland. CZRY interchanges with SDIY.

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.

The information summarized above indicates that CZRY is a carrier by rail, since it operates as a common rail carrier in interstate commerce. The information further indicates that CZRY's principal business consists of its rail freight operations, although it also operates a tourist train several times a month. Cf. 20 CFR 202.3. CZRY's freight operations are subject to the jurisdiction of the Surface Transportation Board (STB). See, 49 U.S.C. § 10501(a)(2)(A) (the STB has jurisdiction over rail carrier transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network).

The Board finds that since CZRY performs railroad freight service as a rail common carrier in interstate commerce, it is therefore an employer under the Railroad Retirement and the Railroad Unemployment Insurance Acts. The Board therefore finds that the Carrizo Gorge Railway, Inc. became an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective July 1, 2001, the date it commenced railroad operations.

Cherryl T Thomas

Cherryl T Thomas

V M Speakman, Jr.

V. M. Speakman, Jr.

Jerome F. Kever

Jerome F. Kever