B.C.D. 02-25

MAR 25 2002

EMPLOYER STATUS DETERMINATION
WTTN, LLC d/b/a West Tennessee Railroad

This is a determination of the Railroad Retirement Board concerning the status of WTNN, LLC, d/b/a West Tennessee Railroad, as an employer under the Railroad Retirement Act (RRA) (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. § 351 et seq.).

In Surface Transportation Board (STB) Finance Docket No. 34039, decided August 9, 2001, WTNN, LLC, filed a verified notice of exemption to lease and operate, pursuant to an agreement with Norfolk Southern Railway Company (BA No. 1525), approximately 140.1 miles of rail line. The rail line runs from milepost IC-406.1 at Fulton, Kentucky, to mile post IC-525.0, one mile north of Ruslor Junction (Corinth), Mississippi. The subject rail line also includes the Bemis to Poplar Corner, Tennessee branch line from milepost GW-00.0 to GW-15.0, the Jackson, Tennessee connection track from milepost Gh-0.0 to GH-2.2, and the Lawrence and Carroll, Tennessee branch line from milepost MM-388.5 to MM-394.5, as well as associated tracks and spurs. The decision noted that the transaction was scheduled to be consummated on August 1, 2001.

In Surface Transportation Board (STB) Finance Docket No. 34073, also decided August 9, 2001, Henry G. Hohorst, Bruce Hohorst and Anthony M. Linn, individuals, filed a verified notice of exemption to continue in control of WTNN, LLC, a New Jersey limited liability company, upon its succeeding to the operating rights and responsibilities of West Tennessee Railroad Corp. (WTRC) (BA No. 2568).[1]

In response to an inquiry from the Chief of the Board's Audit and Compliance Section, the Board received the following information from Bruce Hohorst, part owner and CEO of WTTN. According to Mr. Hohorst, WTNN, LCC is owned by Bruce Hohorst, Henry Hohorst and Anthony Linn. WTNN, LCC began rail operations on August 1, 2001 and employs 20 employees, having acquired 7 employees from WTRC. Mr. Hohorst further stated that WTTN, LCC is strictly a freight operation and operates approximately 180 miles of track with interchanges at Fulton, Kentucky, Humboldt, Tennessee, and Corinth, Mississippi.

---

[1] The Audit and Compliance Section of the Railroad Retirement Board is reviewing the continued status of WTRC as an employer under the RRA and the RUIA.

WTTN, LLC d/b/a West Tennessee Railroad

Section 1(a)(1) of the RRA (45 U.S.C. § 231(a)(1)), insofar as is 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 [45 U.S.C. § 231(a)(1)(i)].

Sections 1(a) and (b) of the RUIA (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).

The information provided indicates that WTTN, LLC is subject to STB jurisdiction by virtue of its operation over the approximately 180 miles of track with interchanges in Fulton, Kentucky, Humboldt, Tennessee, and Corinth, Mississippi. Because WTTN, LLC falls within the definition of employer under section 1(a)(1)(i) of the RRA (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the RUIA, the Board finds that WTTN, LCC became a rail carrier employer effective August 1, 2001, the date on which it began start-up operations. [Cf Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to carrier operations.]

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever