B.C.D. 02-29

APR 02 2002

EMPLOYER STATUS DETERMINATION
Beaufort & Morehead Railway, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Beaufort & Morehead 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.).

The Beaufort & Morehead was held to be an employer under the Acts effective February 4, 1991, when it assumed operation of approximately three miles of rail line between Morehead City and Beaufort, North Carolina. On March 7, 2000, the North Carolina Ports Railway Commission (Railway Commission) reported that the Surface Transportation Board had approved the acquisition of the lease and operation of the railway line by the Railway Commission. See: North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway-Acquisition and Operation Exemption-Beaufort & Morehead Railway, Inc., STB Finance Docket No. 33826, 64 Fed. Reg. 67619, December 2, 1999. Accordingly, the Board held the Railway Commission to be a reactivated employer (B.A. No. 4560) effective January 1, 2000, and terminated the coverage under the Acts of the Beaufort & Morehead effective December 31, 1999 (B.C.D. 00-41).

The Beaufort & Morehead filed a notice of exemption to re-acquire and operate the rail line which had been previously transferred to the Railway Commission. See: Beaufort & Morehead Railway-Acquisition and Operation Exemption- North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway, Inc., STB Finance Docket No. 34151, 67 Fed. Reg. 2729, January 11, 2002.

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).

Beaufort & Morehead Railway, Inc.

The evidence of record establishes that the Beaufort & Morehead is again a rail carrier operating in interstate commerce. Accordingly, it is determined that the Beaufort & Morehead 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 December 28, 2001, the date as of which it was scheduled to re-acquire the rail line[1].

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever

[1] The continued status of North Carolina Ports Railway Commission under the Acts is currently being examined by the Board's Office of Audit and Compliance.