B.C.D. 02-68

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EMPLOYER STATUS DETERMINATION
S&L Railroad, LLC
Sidney & Lowe Railroad, Inc. (B.A. No. 3765)

This is a determination of the Railroad Retirement Board concerning the status of S&L Railroad, LLC (S&L) and the continuing status of Sidney & Lowe Railroad, Inc. (SLR), B.A. No. 3765, as employers 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). SLR was ruled to be an employer under the RRA and RUIA effective July 29, 1982.

According to Mr. Laine Spruiell, Vice President and Controller of Progress Rail Services, the parent company of SLR, effective July 29, 2002, S&L acquired all of the assets and liabilities of the Sidney and Lowe Railroad, Inc. (SLR). S&L is continuing the operations of SLR and will continue to use the trade name, Sidney & Lowe Railroad. In Surface Transportation Board (STB) Finance Docket No. 34228, service date August 8, 2002, S&L filed a notice of exemption to acquire from Progress Rail Services Corporation and operate approximately 11 miles of rail line and connecting track known as the Sidney & Lowe Railroad Line extending from milepost 0 at Huntsman, NE, where it connects with a rail line of the Burlington Northern and Santa Fe Railway Company (BA 1621), to milepost 10 at Brownson, NE, where it connects with a rail line of the Union Pacific Railroad Company (BA 1713). Both the Burlington Northern Santa Fe and the Union Pacific are employers under the Acts engaged in interstate rail transportation. According to the STB decision, S&L will qualify as a Class III rail carrier and its annual revenues will not exceed $5 million annually.

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;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

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The evidence of record establishes that S&L Railroad, LLC is a rail carrier operating in interstate commerce. Accordingly, it is determined that S&L Railroad, LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective July 29, 2002. The Board also finds that the Sidney & Lowe Railroad, Inc. ceased being an employer under the RRA and RUIA effective that same date.

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