B.C.D. 02-84

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EMPLOYER STATUS DETERMINATION
Chicago Heights Switching Company

This is a determination of the Railroad Retirement Board concerning the status of Chicago Heights Switching Company (CHSC) 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 No. 34147 decided January 4, 2002, the owners of CHSC, Paula Mudge-Gibson and Don L. Gibson, were granted an exemption to continue in control of CHSC "upon CHSC's becoming a carrier". STB Finance Docket No. 34147 served January 15, 2002, page 1. Authority for CHSC to operate a line of railroad at Bulkmatic Distribution Center, a total of 3.9 miles, in Chicago Heights, Illinois, was obtained in STB Finance Docket No. 34146, decided January 4, 2002. The line of railroad interchanges with the Union Pacific Railroad (BA 1713), a carrier engaged in interstate commerce, and the Elgin, Joliet, & Eastern Railway Company (BA 1309), a carrier engaged in interstate commerce. CHSC states that it has 6 employees.

The Board notes that in his letter dated February 12, 2002, Mr. Thomas F. McFarland stated his opinion that CHSC would not be an employer under the Acts since it would not consummate the exemption granted in STB Finance Docket 34146. However, this assertion is not consistent with the grant of authority given by the STB in Finance Docket 34145 (to Bulkmatic Railroad Corporation to acquire by sublease from Bulmatic Transport Company approximately 3.9 miles of railroad) and in Finance Docket 34146, (to CHSC to operate the 3.9 miles of railroad). It also is inconsistent with the statement contained in a later letter, dated July 29, 2002, from Mr. McFarland that CHSC did in fact start providing rail service on April 2, 2002.

The evidence indicates that CHSC provides rail-switching operations within Bulkmatic Distribution Center at Chicago Heights, Illinois as an

agent for Bulkmatic Railroad Corporation (BMRC), an STB-authorized rail carrier unaffiliated with CHSC.

Switching that involves the making up or break up of trains for road movement is subject to the jurisdiction of the Surface Transportation Board. In Sinkler v. Missouri P. R. Co., 356 U.S. 326, 327, 2 L. Ed. 2d 799, 801, 78 S. Ct. 758 (1958), the Court described switching as "a vital operational activity of railroading consisting in the breaking up and assembly of trains and the handling of cars in interchange with other carriers". The switching activities that CHSC performs at the Bulkmatic Distribution Center are of this nature.

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.

Although Mr. McFarland contends that CHSC is not an employer subject to the Acts administered by the Board, he provides no support for that conclusion. It is uncontroverted that CHSC is providing switching services over a line of rail that is engaged in interstate commerce. STB Finance Docket 34147 clearly stated that CHSC would become a carrier. The Board concludes that the evidence of record establishes that CHSC is a rail carrier operating in interstate commerce. Accordingly, it is determined that the Chicago Heights Switching Company 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 April 2, 2002, the date it began rail operations.

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