B.C.D. 03-12

JAN 2 9 2003

EMPLOYER STATUS DETERMINATION
South Dakota Railroad Authority

This is the determination of the Railroad Retirement Board concerning the status of South Dakota Railroad Authority 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 Authority is an agency of the State of South Dakota which is authorized to acquire railroad facilities where the South Dakota legislature declares the acquisitions to be in the public interest. The Authority is prohibited from owning rolling stock or locomotives, and from conducting its own rail operations. Consequently, the State leases the lines to local railroad authorities which lease them to various operators which provide rail service. In Surface Transportation Board Finance Docket No. 32901, the Authority filed a notice of exemption to acquire approximately 22.4 miles of rail line formerly owned by Rutland Line, Inc., and the issue of the coverage of the Authority has arisen in connection with this acquisition, the purpose of which was to preserve rail service. The track will be leased to the Dakota, Missouri Valley and Western Railroad, a covered employer under the Acts (B.A. No. 3663). The Authority presently has over 700 miles of track which it leases out.

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).

The Board notes that in its decision regarding Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to

operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line, is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

In the instant case, the Authority meets this test. It does not have as primary purpose to profit from railroad activities (its operations are intended to preserve rail service). The Authority by law does not operate or retain the capacity to operate the rail line. The operators of the rail lines owned by the Authority are covered under the Acts: in addition to the Dakota, Missouri Valley and Western Railroad, the other operators of Authority rail lines are the Dakota Southern Railway Company and D & I Railroad, both of which are covered employers under the Acts (B.A. numbers 2631 and 3641, respectively).

Accordingly, the Board finds that the Authority is not a covered employer under the Acts.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever