B.C.D. 03-30

MAR 27 2003

EMPLOYER STATUS DETERMINATION
Blackwell & Northern Railway Company, Inc.

This is a determination of the Railroad Retirement Board concerning the status of Blackwell & Northern Railway Company, Inc. (BNR) 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).

BNR was incorporated on April 5, 2000. In Surface Transportation Board (STB) Finance Docket No. 34265, service date November 4, 2002, BNR filed a notice of exemption to operate 35.26 miles of rail line owned by the State of Oklahoma by and through the Oklahoma Department of Transportation and Blackwell Industries Authority. The rail line extends from Blackwell, Oklahoma to Wellington, Kansas. BNR replaced South Kansas and Oklahoma Railroad, Inc. (B.A. No. 3880), which had been operating over the line. In response to a letter dated December 13, 2002, from the Board's Chief of Audit and Compliance, Mr. Robert Wagner, President of BNR, stated that it began operations on May 15, 2000, with three employees.

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.

The evidence of record establishes that BNR is a rail carrier operating in interstate commerce. Accordingly, it is determined that Blackwell & Northern Railway Company, Inc. became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding

Blackwell & Northern Railway Company, Inc

provision of the Railroad Unemployment Insurance Act effective May 15, 2000, the date its employees were first compensated. [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 its carrier operations.]

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever