B.C.D. 03-4

JAN 0 9 2003

EMPLOYER STATUS DETERMINATION
S.D. Warren Company d/b/a
Sappi Fine Paper North America

This is a determination of the Railroad Retirement Board concerning the status of S.D. Warren Company d/b/a Sappi Fine Paper North America (Sappi) 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. 34133 decided July 25, 2002, Sappi filed a notice of exemption to acquire from Maine Central Railroad Company and the Springfield Terminal Railway Company (hereinafter referred to as "Guilford") certain joint operating rights over a portion of the Guilford main line of railroad between milepost 8.55 and milepost 9.80 in Skowhegan, Maine (Subject Line), a distance of approximately 1.25 miles. In Sappi's verified notice, Sappi stated that its use of the line is limited to movement of its own traffic. Sappi further stated that its agreement with Guilford does not give it the right or obligation to conduct common carrier operations on the line. Sappi had therefore also filed a motion to dismiss the notice of exemption.

The motion to dismiss the notice of exemption was filed by Ms. Briana K. O'Regan, Intellectual Property & Legal Counsel for Sappi. In Sappi's motion, Sappi stated that the joint operating rights being acquired by Sappi will be limited to moving its own traffic to, from and on the Subject Line. The motion also stated that Sappi's operations will be limited solely to traffic originating and terminating at the Sappi facility in Skowhegan, Somerset County, Maine (Somerset facility). According to the motion, Sappi will not hold itself out as a common carrier on the Subject Line, nor are there any other rail customers on the Subject Line. Sappi's sole intent is to expedite and improve efficiency of switching cars to and from its Somerset facility.

In an STB decision in Finance Docket 34133 dated September 25, 2002, the STB concluded that it lacks jurisdiction over this transaction. The

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STB concluded that Sappi's operations on the line will be in the nature of a private carriage and that its operations are outside the scope of the STB's jurisdiction. The STB also determined that pursuant to the agreement, Guilford retains the right and the ability to carry out its common carrier obligations on the line. Therefore, the STB granted Sappi's motion to dismiss and vacate the notice of exemption.

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 Sappi is not subject to the jurisdiction of the Surface Transportation Board and is not a rail carrier operating in interstate commerce. Accordingly, it is determined that S.D. Warren Company d/b/a Sappi Fine Paper North America is not 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.

Cherry T. Thomas

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