B.C.D. 03-52

JUN 1 0 2003

EMPLOYER STATUS DETERMINATION
Hooper-Myron Corporation

This is the decision of the Railroad Retirement Board with respect to the status of Hooper-Myron Corporation (HMC) as an employer subject to 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).

According to Mr. David D. Zegalis, attorney for HMC, Illiana Railroad Service, Inc. (IRS) (BA No. 3376) was merged into HMC effective January 1, 2000. Neither IRS nor HMC has reportedly ever had any employees. Prior to the merger, the rail service on the line of railroad, from Kankakee, Illinois to Sheldon, Illinois (approximately 31.14 miles), from Sheldon, Illinois to Swanginton, Indiana (approximately 20.9 miles), and from Swanginton, Indiana to Lafayette, Indiana (approximately 25.7 miles) was provided by the Kankakee, Beaverville, and Southern Railroad (KBS) (BA 2337). Rail service on the line continues to be provided by the KBS.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b), contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. 3231.

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In this case, HMC does not operate the rail line in question itself. Railroad operations are conducted by KBS, which also contracted with IRS, to provide rail service. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making a determination as to the coverage under the Acts of an entity in such a case. Such an entity 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.

Mr. Zegalis advised the Board that HMC acquired the rail line in order to preserve rail service. The Board thus finds that HMC does not have as a business purpose to profit from railroad activities. HMC does not own or operate any rail equipment. It has no employees. HMC does not have the capacity to operate the rail line itself, and the operator of the line is a covered employer under the Acts administered by the Board.

Accordingly, it is determined that the Hooper-Myron Corporation is not an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act.

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