B.C.D. 04-24

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EMPLOYER STATUS DETERMINATION
Kansas Southern Railway, LLC

This is the decision of the Railroad Retirement Board regarding the continued status of the Kansas Southern Railway, LLC, 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).

Kansas Southern was held to be an employer under the Acts effective December 11, 2000, (B.A. Number 2799). It operated over 43 miles of track as a subcontractor of V & S Railway Company, a covered employer under the Acts (B.A. No. 2796). Kansas Southern ceased operating as a subcontractor on October 31, 2002, when the contract was terminated and assigned to the New Hampshire and Vermont Railway Company[1].

Section 202.11 of the Board's regulations provides that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

Through the termination of its contract with V&S Railway Company and the cessation of operations, Kansas Southern has lost the characteristics essential to the existence of an employer status. Accordingly, the Board holds that Kansas Southern ceased to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on October 31, 2002. Cf. Rev Ruling 82-99, 1982-2 C.B. 154, wherein the Internal Revenue Service ruled that a railroad ceases to be an employer subject to taxes under the Railroad Retirement Tax Act when the railroad's employees stop performing services in connection with the railroad's carrier activities.

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[1] This company is currently being reviewed by the Board's Audit and Compliance Section regarding its status under the Acts.

It should be noted that the obligation of Kansas Southern to file reports of service and compensation for the period of its operation, which it has apparently failed to do, is not extinguished by the issuance of this decision terminating the coverage of Kansas Southern.

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