B.C.D. 04-8

EMPLOYER STATUS DETERMINATION
SWKR Operating Company, Inc.

FEB 2 0 2004

This is the decision of the Railroad Retirement Board regarding the continued status of SWKR Operating Company, Inc. (SWKR) 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).

SWKR was held to be an employer under the Acts effective June 15, 1992, (B.A. Number 2761)[1]. SWKR ceased operations on October 31, 2003. Its assets were sold on that date to San Pedro Operating Railroad Company[2]. See Surface Transportation Board decision dated November 21, 2003 (STB Finance Docket No. 34430). SWKR last compensated employees on October 30, 2003.

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 sale of its rail and other assets and its cessation of operations, SWKR has lost the characteristics essential to the existence of an employer status. Accordingly, the Board holds that SWKR ceased to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts effective with the close of business on October 31, 2003. 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.

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever

[1] Its name from that time until December 1, 1994, was San Pedro & Southwestern Railway.
[2] A coverage determination regarding this company is currently pending.