B.C.D. 01-38

**EMPLOYER DETERMINATION**
**Kendallville Terminal Railway Co.**

APR 30 2001

This is a determination of the Railroad Retirement Board concerning the status of Kendallville Terminal Railway Co. (KTRC) 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 etseq.) (RUIA).

In Surface Transportation Board Finance Docket No. 33941, decided September 29, 2000, Pioneer Railcorp (Pioneer) and Michigan Southern Railroad Company (B.A. No. 2271) (MSO) filed a joint verified notice of exemption to undertake a transaction within their corporate family. The exempt transaction involves a reorganization of MSO railroad holdings and the formation of two new subsidiaries, KTRC and Elkhart & Western Railroad Company (E&WR).[1] MSO owns 100% of the stock of Michigan Southern Railroad Company, Inc. (B.A. No. 3285) (MSRR), a nonoperating Class III shortline railroad, which owns a property interest in three railroad segments currently leased and operated by MSO. The three segments of rail line are (1) between milepost 0.0, at Elkhart, IN, and milepost 9.8, at Mishiwaka, IN (Elkhart Segment); (2) between milepost 119.0 and milepost 120.1, at Kendallville, IN (Kendallville Segment); and (3) between milepost 382.5, at or near Coldwater, MI, and milepost 421.2, at or near White Pigeon, MI (Michigan Segment). According to the STB decision, MSO will continue to operate the Michigan Segment and has assigned its operating leases of the Elkhart Segment to E&WR and the Kendallville Segment to KTRC.

Information regarding KTRC was provided by Mr. Daniel A. LaKemper, General Counsel for KTRC. According to Mr. LaKemper, Mr. Guy L. Brenkman is the Chief Executive Officer for KTRC. He stated that KTRC began rail operations on February 1, 2001, but reported that KTRC currently does not have any employees. He stated that MSO, on a contract

---

[1] The Board's Audit and Compliance Section is currently conducting a coverage investigation of Elkhart & Western Railroad Company.

**Kendallville Terminal Railway Co.**

basis, provides employees to KTRC and that KTRC intends to hire employees in the near future. He further stated that KTRC provides common carrier freight service and expects to handle approximately 600 carloads of freight annually. He also stated that KTRC interchanges with Norfolk Southern (B.A. No. 1525) at Kendallville, Indiana.

The evidence of record establishes that KTRC is a rail carrier operating in interstate commerce. Accordingly, it is determined that Kendallville Terminal Railway Co. became 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 effective February 1, 2001, the date on which it commenced operations.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever