B.C.D. 02-39

JUN 04 2002

EMPLOYER STATUS DETERMINATION
Bulkmatic Railroad Corporation

This is a determination of the Railroad Retirement Board concerning the status of Bulkmatic Railroad Corporation (BRC) 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. 34145 decided January 4, 2002, BRC filed a notice of exemption to acquire by sublease from Bulkmatic Transport Company approximately 3.9 miles of railroad right-of-way and trackage known as Bulkmatic Distribution Center, at Chicago Heights, Illinois. In a separate STB decision decided January 4, 2002 (STB Finance Docket No. 34146), Chicago Heights Switching Company (CHSC),[1] filed a verified notice of exemption to operate, pursuant to an agreement with BRC, over that same 3.9 miles of railroad right-of-way and trackage known as the Bulkmatic Distribution Center, at Chicago Heights, Illinois.

Information regarding BRC was provided by Mr. David C. Dillon with the law firm of Dillon & Nash, LTD. According to Mr. Dillon, Mr. Doug Harmison is BRC's Chief Executive Officer. Mr. Dillon stated that BRC is a subsidiary of Bulkmatic Transport Company. BRC was incorporated on November 16, 2001. It began operations and first compensated its one part-time employee on January 1, 2002. Mr. Dillon stated that Mr. Harmison performs duties of Chief Executive Officer on a part-time basis and that it is anticipated that two additional employees of BRC will work on an intermittent allocated basis. Mr. Dillon also stated that principal operation of the railroad is to be conducted by railroad contractor, Chicago Heights Switching Company. Mr. Dillon advised that BRC's purpose is to conduct necessary freight car switching operations on the railroad tracks contained within the limits of the Chicago Heights facility. BRC renders services for Union Pacific Railroad (BA1713) and Elgin Joliet Eastern Railroad (BA 1309). Mr. Dillon described Chicago Heights Switching Company as an independent contractor with whom BRC contracts to provide maintenance of the track located on the Chicago Heights facility and also to provide personnel to conduct switching

[1]The Board's Office of Audit and Compliance is reviewing the possible coverage of CHSC as an employer under the RRA and RUIA.

Bulkmatic Railroad Corporation

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;

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

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. No. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line 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.

There is no information in this case that would indicate that BRC 's intent in subleasing the line is primarily designed to preserve rail service rather than profit from railroading activities. In fact, Mr. Dillon indicated that 95 percent of BRC's revenue was received from rail carriers. The Board therefore finds that BRC is an enterprise which is intended to profit from railroad activities. The Board thus finds that Bulkmatic Railroad Company became a rail carrier employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding

Bulkmatic Railroad Corporation

provision of the Railroad Unemployment Insurance Act effective January 1, 2002, the date it began operations.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever