B.C.D. 02-51

JUL 03 2002

EMPLOYER STATUS DETERMINATION
Buffalo Ridge Regional Railroad Authority

This is the determination of the Railroad Retirement Board concerning the status of individuals who performed services for Buffalo Ridge Regional Railroad Authority during the period, July 24, 2000, to November 27, 2000, when it was 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).

Prior to July 24, 2000, Nobles Rock Railroad, Inc., (B.A. No. 2650) provided rail operations over a rail line owned by Buffalo Ridge Regional Railroad Authority. Nobles Rock ceased rail operations on July 23, 2000[1]. In Surface Transportation Board (STB) Finance Docket No. 33925, decided September 14, 2000, Buffalo Ridge filed a verified notice of exemption to operate its rail line. Buffalo Ridge is a political subdivision formed pursuant to Minnesota Statutes Chapter 398A primarily for the purpose of acquiring a railroad line that was about to be abandoned and to own the line for the purpose of leasing the line to different rail operators. Since 1988 the line has historically been leased to operators who were responsible for the operations on the line. Buffalo Ridge began rail operations on July 24, 2000 because its previous operator, Nobles Rock, was unable to provide continued service on the rail line. However, on November 27, 2000, Minnesota Southern Railway, Inc., (B.A. No. 2655) began rail operations over Buffalo Ridge's rail line.

Consequently, the Board held Buffalo Ridge to be an employer under the Acts for the period July 24, 2000, to November 27, 2000. See B.C.D. 01-84, decided December 4, 2001. However, Buffalo Ridge did not report any employee service for that period, and advised that it utilized the services of four individuals[2] referred to as independent contractors. Information provided on behalf of Buffalo Ridge indicates that the:

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[1] In a decision dated August 27, 2001 (B.C.D. 01-72), we held that effective with the close of business on July 23, 2000, Nobles Rock ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

[2] Herb Tollefson, Herb Tollefson, Jr., Kurt Kester, and Dan DeWispelaere.

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> Services consisted of the operation of the leased engines and the interchange of cars with both the Santa Fe-Burlington Northern railroad at Manley, MN and the Union Pacific at Org, MN. They [the four individuals] would spot the cars on the shortline for the individual shippers and would assist the shippers, as needed, in the movement and loading of the cars. They would then assemble the cars and transport them to the appropriate interchange point. They did complete the necessary reports as relates to the car interchange. They were not involved in marketing. In addition they performed routine track maintenance and inspection but there was limited, if any, actual work undertaken in this short time period. Any required maintenance on the leased equipment was performed by Mr. Tollefson as well.

Section 1(b) of the Railroad Retirement Act and section 1(d) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation. Section 1(d)(1) of the RRA further defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
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> (ii) he renders such service for compensation * * *.

Section 1(e) of the RUIA contains a definition of service substantially identical to the above, as do sections 3231(b) and 3231(d) of the Railroad Retirement Tax Act (26 U.S.C. 3231(b) and (d)). The focus of the test under paragraph (A) is whether the individual performing the service is subject to the control of the service-recipient not only with respect to the outcome of his work but also with respect to the way he performs such work.

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The information submitted shows that the work performed by the four individuals for Buffalo Ridge is that of the various functions involved in operating the trains, work which could only be performed under the control of the rail carrier obligated to operate the rail line. Accordingly, it is the determination of the Board that the individuals who performed rail-related service for Buffalo Ridge were employees of Buffalo Ridge during the period from July 24, 2000 to November 27, 2000, when it was an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

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