B.C.D. 02-72

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EMPLOYER STATUS DETERMINATION
ISG-South Chicago & Indiana Harbor
ISG-Cleveland Works Railway Company

This is the determination of the Railroad Retirement Board concerning the status of ISG-South Chicago & Indiana Harbor (South Chicago) and ISG-Cleveland Works Railway Company (Cleveland Works) as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Cleveland Works is a wholly-owned subsidiary of ISG Cleveland, Inc., which is in turn a wholly-owned subsidiary of International Steel Group, Inc. South Chicago is a wholly-owned subsidiary of ISG Indiana Harbor Inc., which is in turn is also a wholly-owned subsidiary of International Steel Group, Inc.

In Surface Transportation Board Finance Docket No. 34182, Cleveland Works filed a notice of exemption to acquire and operate 9.5 miles of rail line formerly owned by The Cuyahoga Valley Railway Company and River Terminal Railway Company, both employers under the Acts (B.A. numbers 4207 and 4346, respectively)[1]. It has 74 employees who were hired beginning May 5, 2002. Operations began May 16, 2002. The line is a terminal switching railroad in Cleveland, Ohio which interchanges with a number of rail lines including CSXT and Norfolk Southern.

In Surface Transportation Board Finance Docket No. 34188, South Chicago filed a notice of exemption to acquire and operate 5 miles of rail line formerly owned by Chicago Short Line Railway Company, an employer under the Acts (B.A. number 4315)[2]. Operations began April 12, 2002. The line is a terminal switching railroad which interchanges with a number of rail lines including CSXT and Norfolk Southern Railway Company. According to information provided, operations for South Chicago are performed by individuals supplied by a temporary employment agency, CMM[3].

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[1] The continued operation of The Cuyahoga Valley Railway Company and River Terminal Railway Company is being reviewed to determine whether their status as covered employers under the Acts should be terminated.
[2] The continued status of Chicago Shortline Railway Company under the Acts is being separately determined.
[3] The work performed by these individuals is currently being reviewed to determine whether they should be considered to be covered employees under the Acts.

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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 substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that South Chicago and Cleveland Works are carriers operating in interstate commerce. Accordingly, it is determined that these companies became employers 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 as of May 5, 2002, in the case of Cleveland Works, and as of April 12, 2002, in the case of South Chicago, the dates as of which these companies first commenced operations or hired employees.

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