B.C.D. 03-42

EMPLOYER STATUS DETERMINATION
Cenex Harvest States Cooperatives
CHS Holdings, Inc.

MAY 0 8 2003

This is the decision of the Railroad Retirement Board regarding the status of Cenex Harvest States Cooperatives and CHS Holdings, Inc., as employers 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).

Cenex is the grains and foods division for CHS Cooperatives, a producer-to-consumer agricultural cooperative owned by some 325,000 farmers and their local co-operatives. Cenex is the largest United States grain cooperative, and performs a full complement of agricultural operations, from locally controlled farm supply to grain marketing to food processing and distribution.

CHS Holdings, Inc., is a wholly-owned subsidiary of Cenex. Pursuant to a Notice of Exemption filed by CHS (Surface Transportation Board Finance Docket No. 34207, decided June 13, 2002), on or about June 3, 2002, CHS acquired a 2.11 mile rail line from J. K. Line, Inc. (a covered employer under the Acts, B.A. No. 3371)[1]. CHS states that it has not had any employees and has not operated the rail line, which was operated solely by Cenex employees with a locomotive owned by Cenex. The Burlington Northern Santa Fe connects to the line and drops off and picks up rail cars for the Cenex elevator facility. The operation also occasionally switches cars to and from an adjacent facility, J. R. Simplot Company.

In Surface Transportation Board Finance Docket No. AB-845X, decided March 12, 2003, the Surface Transportation Board granted the petition of CHS to abandon the rail line, operation of which will be continued by Cenex.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(1)(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;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which

[1] The line acquired did not represent the entire rail operation of J. K. Line, or even a significant portion of its rail operations.

> operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) and (b)) contain substantially similar definitions.

The Surface Transportation Board has jurisdiction over common carriers engaged in the interstate transportation of passengers or property by railroad pursuant to section 10501 of title 49 of the United States Code. A common carrier may be defined in general as one which holds itself out to the public as engaging in the business of transporting people or property from place to place for compensation. It is the right of the public to demand service that is the real criterion determinative of an entity's character as a common carrier. In contrast, a private carrier is one which, without making it a vocation or holding itself out to the public as ready to act for all who desire the service, undertakes by special agreement in a particular instance only, to transport property or persons from place to place. Private carriers thus undertake not to carry for all persons indiscriminately, but rather to transport only for those with whom they see fit to contract individually. The Railroad Retirement Board has followed the distinction made by the Surface Transportation Board, which is judicially supported in The Tap Line Cases, 234 U.S. 1 (1913); also International Detective Service, Inc. v. Interstate Commerce Commission, 595 F.2d 862, 865 (D.C. Cir. 1979).

CHS never operated the rail line which had authority to operate, and which it has now abandoned with STB approval. The Board thus finds that CHS is not now and has not ever been a carrier under the Acts. Cenex, the parent company of CHS and the operator of the line, performs services over that line chiefly for itself, shipping agricultural products of the cooperative from it to the Burlington Northern Santa Fe, and occasionally for one other company. Its services are not provided to or offered to other parties. Consequently, it is not

holding itself out to the public as engaging in the business of transportation of persons or property over the line in question. The Board finds that CHS is a private carrier, rather than a common carrier. Accordingly, the Board determines that CHS and Cenex are not employers under the RRA and the RUIA.

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