B.C.D. 04-46

SEP 17 2004

EMPLOYER STATUS DETERMINATION
MVC Transportation, LLC (MVCT)

This is the determination of the Railroad Retirement Board concerning the status of MVC Transportation, LLC (MVCT) 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).

Initial information regarding MVCT was provided by Mr. Richard R. Wilson, Regulatory Counsel for MVCT. Mr. Wilson stated that MVCT is a non-operating limited liability company which has acquired the railroad properties for the purpose of ownership only. Mr. Wilson stated that MVCT acquired the McKees Rocks Yard property and rail lines on April 21, 2004 from P&LE Properties, Inc.[1] According to Mr. Wilson, all common carrier railroad operations on the railroad facilities are and will be provided by CSX Transportation, Inc. (B.A. No. 1524), a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. MCVT has no paid employees according to Mr. Wilson.

Pursuant to a transaction approved by the Surface Transportation Board (STB), and consummated by the parties on April 21, 2004, MVCT acquired approximately 15 miles of rail lines located in Allegheny County, Pennsylvania, from P&LE Properties, Inc. (P&LE). See STB Finance Docket No. 34462, decided April 21, 2004. According to the STB decision, these rail lines, which consist of the track facilities of the former Pittsburgh and Lake Erie Railroad Company's McKees Rocks Yard, do not have assigned mile posts and extend adjacent to the CSX Transportation, Inc. (CSXT) mail line in McKees Rocks, Pennsylvania. The portions of the lines that receive service are currently served by CSXT, according to the STB decision.

According to the information provided by Mr. Wilson, MVCT does not intend to commence its own rail operations and intends to be a non-operating owner of common carrier railroad facilities.

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[1]"On April 22, 1997, pursuant to a Bankruptcy Court order in In Re: Pittsburgh & Lake Erie Properties, Inc., Case No. 96-406 (MFW) Chapter 11, P&LE sold the McKees Rocks Yard property to Allegheny Railroad Properties, Inc. (ARC) and accepted a cognovit judgment note and mortgage on the McKees Rocks Yard property from ARC. P&LE's Vice President and Treasurer, John D. Hartman, claims that P&LE retained ownership of the property because ARC did not fully pay for the property pursuant to the parties' agreement. MVC also believes P&LE retained its right, title, and property interest in the McKees Rocks Yard. After ARC defaulted on its payment obligations to P&LE, the ARC note and mortgage was acquired and satisfied by Mariah Venture Capital & Consulting, Co. (Mariah) with approval of the Bankruptcy Court by order dated June 18, 1999. With the consent of P&LE, Mariah will assign the ARC note and mortgage to MVC, which in lieu of execution and foreclosure, will by deed and bill of sale from P&LE take title to the rail yard facilities subsequent to the effective date of this acquisition exemption."

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Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), 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 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 * * *.

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. 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.

Applying this test to the facts of MVCT, the Board determines that MVCT is a covered rail carrier employer under the Acts. As stated in the STB decision, MVCT certified that its projected annual revenues are not projected to exceed $5 million. Additionally, there is no information that would indicate that MVCT's intent in purchasing the line is primarily designed to preserve rail service rather than to profit from railroading activities. The Board finds that MVCT has as a primary business purpose to profit from railroad activities on the rail line it acquired. We do not have to reach the other two considerations, since all three need to be present to remain outside the coverage of the RRA and the RUIA.

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Accordingly, the Board finds that MVCT became a rail carrier employer under section 1(a)(1)(i) of the RRA and the corresponding sections of the RUIA beginning April 21, 2004, the date it acquired its rail line.

Original signed by:

Michael S. Schwartz

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Jerome F. Kever