B.C.D. 04-55

NOV 16 2004

EMPLOYER STATUS DETERMINATION
St. Marys Railroad, L.L.C.
Durango Railroad Corporation

This is the determination of the Railroad Retirement Board concerning the status of St. Mary's Railroad, L.L.C., and Durango Railroad Corporation 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.).

In a decision dated January 15, 2003, the Board held that the coverage of St. Marys Railroad under the Acts was terminated as of March 31, 2000, and that Durango became an employer under the Acts as of April 1, 2000 (B.C.D. 03-5). This ruling was based on the following information submitted by the president and chief executive officer of St. Marys: St. Marys was sold to Durango Paper Company, and Durango Paper Company set up a new corporation, Durango Railroad Corporation, which performed the rail operations involved under the name Durango Railroad Corporation d/b/a St. Marys Railroad Company.

In a letter dated March 25, 2004, Thomas McFarland, counsel for St. Marys, advised that Durango Railroad Corporation never operated and was never incorporated.

At the request of the Board's legal department, the Board's office of Audit and Compliance asked Mr. McFarland, in a letter dated May 18, 2004 to explain the discrepancies in the information provided to the Board. In a response dated September 15, 2004, Mr. McFarland advised that the information provided to the Board for its decision in B.C.D. No. 03-5 was incorrect. With that letter, Mr. McFarland submitted a sworn affidavit of Herbert Crabtree, General Manager of St. Marys Railroad, LLC. In the affidavit, Mr. Crabtree advised that the information originally provided to the Board was incorrect, that Durango Railroad Corporation (DRC) was never incorporated, and that DRC never operated as a rail carrier. Mr. Crabtree also explained that DRC was the name used by St. Marys Railroad for a short time period and indicated that St. Marys Railroad has continued the railroad operations which it was performing prior to B.C.D. No. 03-5.

Based upon the most recent information cited above, the Board reopens its decision in B.C.D. No. 03-5, dated January 15, 2003, and cancels that decision. St.

Marys Railroad continues to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts as it was prior to that decision. The determination that Durango is an employer under the Acts is revoked.

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