B.C.D. 04-62

EMPLOYER STATUS DETERMINATION
Alliance Terminal Railroad, LLC

DEC 0 3 2004

This is the determination of the Railroad Retirement Board concerning the status of Alliance Terminal Railroad, LLC, as an employer 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 Surface Transportation Board Finance Docket No. 34537, Alliance filed a notice of exemption to sublease from Quality Terminal Services, LLC (a covered employer under the Acts; B.A. No. 4874), and operate approximately 12.9 miles of rail line owned by the Burlington Northern Santa Fe Railroad Company (BNSF). Alliance is owned by Mr. Patrick Broe who also owns OmniTRAX, Inc., a company which is not covered under the Acts and which owns a number of rail carriers. Alliance has 16 employees. They were first compensated July 25, 2004, and Alliance began operations on or about October 1, 2004. It interchanges with the Burlington Northern.

Alliance's operation consists of "taking cars from the interchange point with the BNSF and moving them to BNSF's intermodal ramp and then moving cars from the intermodal ramp to the interchange point. In addition, it will provide switching services within the ramp. Finally, it may pick up and set up railcars at another BNSF facility about eleven (11) miles from the intermodal ramp."

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;
>
> (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 * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that Alliance is a carrier operating in interstate commerce. Accordingly, it is determined that Alliance is an employer 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 July 25, 2004, the date as of which it first compensated employees. Cf. Rev. Ruling 82-100, 1982-1 C.B. 155, wherein the Internal Revenue Service ruled that a company becomes an employer under the Railroad Retirement Tax Act on the date it hires employees to perform functions directly related to its commencement of railroad carrier operations.

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