B.C.D. 05-19

MAY 13 2005

EMPLOYER STATUS DETERMINATION
Calumet Transload and Railroad, L.L.C.

This is the determination of the Railroad Retirement Board concerning the status of Calumet Transload and Railroad, L.L.C., 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.).

Information regarding Calumet was provided by David C. Dillon, outside counsel for Calumet. According to Mr. Dillon, Calumet began doing business January 2, 2005. Calumet currently has two employees.

In Surface Transportation Board Finance Docket No. 34639, Calumet filed a notice of exemption to lease and operate a rail line approximately one mile in length which interchanges with the Norfolk Southern Railroad and possibly the Indiana Harbor Belt Railroad. Calumet is to interchange cars of coal from the Norfolk Southern (and possibly the Indiana Harbor Belt), with possible outbound switching with Chicago Short Lines. Calumet will switch cars to be unloaded into barges in the Calumet River, and "will switch cars to on-site locations to be unloaded on ground, for transloading and/or blending of various types of coal, followed by reload into coal cars, trucks, or barges."

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 Calumet is a carrier operating in interstate commerce. Accordingly, it is determined that Calumet 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 January 2, 2005, the date as of which it commenced operations[1].

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[1] It should be additionally mentioned that Mr. Dillon advised that Calumet "will have its direct operating employees (i.e., engineers, switchmen, track maintenance crew, locomotive and car maintenance crew[)] provided by outside contractors." The Board notes that prior decisions by the agency have held that services performed by individuals operating a railroad are covered services under the Acts. See, e.g., Buffalo Ridge Regional Railroad Authority, B.C.D. 02-51. Accordingly, the Board is referring the matter of the operating employees to the Board's Office of Audit and Compliance for review.