B.C.D. 05-22

EMPLOYER STATUS DETERMINATION MAY 2 4 2005
Central New York Railroad Corporation (CNYR)

This is a determination of the Railroad Retirement Board concerning the status of Central New York Railroad Corporation (CNYR) 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 (STB) Finance Docket No. 34643, decided January 12, 2005, CNYR filed a verified notice of exemption to lease and operate approximately 123.1 miles of rail line currently owned by Norfolk Southern Railway Company (NS) (B.A. No. 9408) between milepost 89.9 at or near Port Jervis, New York, and milepost 213.0 at Binghamton, New York, in Broome, Sullivan, Delaware and Orange Counties, New York, and Pike and Susquehanna Counties, Pennsylvania. According to the STB decision, NS is retaining overhead trackage rights over the rail line.

Information regarding CNYR was furnished by Mr. Nathan R. Fenno, Executive Vice President-General Counsel for CNYR. In a letter dated January 12, 2005, Mr. Fenno stated that the President and Chief Executive Officer of CNYR is Mr. Gerald McKenna. According to Mr. Fenno, CNYR is owned by its parent company, Delaware Otsego Corporation (B.A. No. 9248). Mr. Fenno stated that CNYR commenced rail operations on December 12, 1972. According to information provided by Mr. Fenno, CNYR has been inactive for many years and did not have any employees until January 1, 2005, at which time it hired seven employees. Mr. Fenno stated that CNYR will operate in freight service over the rail lines and its expected volume of traffic is approximately 1,000 cars per year. Initially, CNYR expects all of its freight traffic to be with NS. CNYR interchanges with NS, and the New York, Susquehanna and Western Railway Corporation (B.A. No. 3251).

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.

Section 1 of the RUIA contains essentially the same definition. (45 U.S.C. § 351), as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that CNYR is a carrier operating in interstate commerce. Accordingly, it is determined that the Central New York Railroad Corporation (CNYR) became 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 effective December 12, 1972, the date as of which CNYR began operations. Service and compensation of CNYR employees may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations (20 CFR §211.16).

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever