B.C.D. 05-24

JUN 14 2005

EMPLOYER STATUS DETERMINATION
Appalachian and Ohio Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Appalachian and Ohio Railroad, Inc., 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 Appalachian was provided by Craig R. Richey of Watco Companies, Inc., the parent company[1] of Appalachian. According to Mr. Richey, Appalachian began doing business March 18, 2005, and currently has 49 employees.

In Surface Transportation Board Finance Docket No. 34653, Appalachian filed a notice of exemption to lease and operate approximately 158.22 miles of rail line from CSX Transportation. Appalachian interchanges with CSXT, Beech Mountain Railroad Company, and Elk River Railroad, Inc., covered employers under the Acts (B.A. numbers 1524, 3416, and 2411, respectively) It also interchanges with the West Virginia Central Railroad, which is operated by the Durbin and Greenbrier Valley Railroad, Inc., a covered employer under the Acts (B.A. number 2413).

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 * * *.

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[1] Watco Transportation Services, Inc., is also reported to be the parent company of Appalachian. Since Appalachian is covered under the Acts by reason of its being a carrier, not by reason of its ownership, the identity of the parent of Appalachian does not affect this decision.

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 Appalachian is a carrier operating in interstate commerce. Accordingly, it is determined that Appalachian 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 March 18, 2005, the date as of which it commenced operations.

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