B.C.D. 05-6

EMPLOYER STATUS DETERMINATION
Walden Ridge Railroad Company, Inc.

FEB 22 2005

This is the determination of the Railroad Retirement Board concerning the status of Walden Ridge Railroad Company, Inc.[1], 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.).

On November 23, 2004, the Board held Heritage Railroad Corporation not to be a covered employer under the Acts. See B. C. D. 04-56. Heritage is a private non-profit corporation that was chartered to preserve and rehabilitate a rail system serving the former Department of Energy K-25 Gaseous Diffusion site in Oak Ridge, Tennessee. Heritage has no employees. Heritage and its parent corporation, the Community Reuse Organization of East Tennessee, leased the railroad from the Department of Energy and ran the line initially by an operating contract from August 25, 2000, with Southern Freight Logistics LLC d/b/a Southern Freight Railroad, an employer under the Acts (B.A. No. 5591). Effective September 17, 2003, the railroad leased by Heritage was run by operating contract with Walden Ridge.

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has Surface Transportation Board authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board. As mentioned above, the Board found that Heritage is not a carrier under the test set out in the Railroad Ventures decision.

The rail operation at issue is over 14.5 miles of track consisting of seven miles from the interchange with the Norfolk Southern Railway (B. A. No. 1525) at Blair, Tennessee to the East Tennessee Technology Park, and 24 industrial spurs within the park which total an additional seven and one half miles of track.

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[1] Also referred to as "Walden's Ridge Railroad Corporation."

As mentioned above, effective September 17, 2003, Walden Ridge took over the operations formerly performed by Southern Freight Railroad. According to Jeff Deardorff, President of Heritage, the first operating contract for Heritage terminated September 17, 2003, at which time Heritage entered into a contract with Walden Ridge to operate the rail line. Chris Williams, one of the principals of Walden Ridge, advises that "the two principals of Walden's Ridge are handling the operating duties without the use of employees. The principals are currently receiving no compensation for their work. All maintenance is being done by outside contractors."

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.

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 Walden Ridge is operating a rail line in interstate commerce. Accordingly, it is determined that Walden Ridge 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 September 17, 2003, the date as of which it commenced operating the rail line for Heritage.

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