B.C.D. 05-8 **MAR 11 2005**

EMPLOYER STATUS DETERMINATION
Belfast and Moosehead Lake Railroad Company
Railstar Corporation d/b/a Belfast and Moosehead Lake Railroad Company

This is the determination of the Railroad Retirement Board concerning the continuing status of Belfast and Moosehead Lake Railroad Company (BML) and the new status of Railstar Corporation d/b/a Belfast and Moosehead Lake Railroad Company (Railstar/BML) as an employer under the Railroad Retirement Act (45 U.S.C. §231, et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351, et seq.) (RUIA).

Information about both BML and Railstar/BML was provided by Mr. Ronald J. Trottier, Vice President of Railstar Corporation. Railstar Corporation, a non-carrier, purchased the assets and the name of the Belfast and Moosehead Lake Railroad Company (BA No. 2102) on August 27, 2003. BML was a class III line-haul railroad with coverage under the RRA and RUIA creditable from July 1, 1867. Since its last movement of freight in 2001, BML operated primarily as a tourist railroad on trackage (owned by the state of Maine and leased to BML) from Belfast to Unity, Maine. Mr. Trottier advised that the assets and income of BML were purchased for the purpose of operating a tourist passenger business and that Railstar did not apply to the Surface Transportation Board (STB) for operating authority. He stated that, in the future, should circumstances arise for a freight operation, "Railstar would have to apply for operating authority from the Surface Transportation Board."[1]

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:

[1] Railroad Retirement Board review of this matter began when a former employee of BML, now an employee of Railstar/BML, advised that Railstar/BML ceased paying railroad retirement taxes. Mr. Bill Monson, temporary Acting General Manager of Railstar/BML, confirmed that it stopped paying railroad retirement taxes in August 2003.

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49 [45 U.S.C. § 231 (a)(1)(i)].

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

It is clear that BML has been a covered employer under the RRA and RUIA inasmuch as it was subject to the jurisdiction of the STB as a class III line-haul railroad. Although Mr. Trottier stated that it was his understanding that the last freight movement by BML was in 2001, the mere fact that a railroad has not had any freight business does not, in and of itself, diminish its character as a carrier by railroad under STB jurisdiction. Our records show that BML has consistently reported and paid railroad retirement tax and unemployment contributions through August 2003. STB decisions over the last five years show that neither Railstar Corporation nor BML sought authority from the STB to exempt either entity with respect to the sale transaction of the assets and income of BML to Railstar Corporation, which created Railstar/BML.[2]

Section 202.11 of the Board's regulations provides that:

> The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

The sale by BML on August 27, 2003 of all of its railroad assets as well as its name, constituted a loss of the characteristics essential to the existence of an employer status. Although BML remains a legal entity as a corporation, it is clear that BML is no longer capable of

---

[2] It is noted that the purchase and sale agreement between BML and Railstar Corporation obligated the buyer, Railstar, as a condition precedent to closing, to obtain, among other things, approval from the STB.

conducting railroad operations. We therefore find that BML ceased to be a rail carrier employer under the RRA and the RUIA effective August 27, 2003, the date it sold its name and its assets.

Turning to Railstar/BML, Part A of subchapter IV of Title 49 sets forth the provisions governing the jurisdiction of the Surface Transportation Board (STB) over rail transportation. It provides in pertinent part that the STB has jurisdiction over transportation by rail carrier to the extent that the transportation is in the United States and is between a place in a State and a place in the same or another State as part of the interstate rail network (49 U.S.C. §10501 (a)(2) (A)).

In this case, Railstar/BML is a carrier by rail, since it operates a passenger railway. However, Railstar/BML does not transport passengers from a place in one State to a place in the same or another State as part of the interstate rail network. Rather, it provides excursion service between two points entirely within one State. Railstar/BML does not interchange with any railroad, and does not "through-ticket" any passengers or freight onto any other rail carrier. It appears that Railstar/BML's operation of its tourist railroad is thus not subject to STB jurisdiction. Based upon the evidence of record, we find that Railstar/BML is not an employer under the RRA and the RUIA.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever