

EMPLOYER STATUS DETERMINATION

New River Railway Company (NRRC) (B.A. No. 2560)

This is the determination of the Railroad Retirement Board concerning the continued status of New River Railway Company (NRRC) (B.A. No. 2560) 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).

In Legal Opinion L-66-181, issued October 21, 1966, NRRC was found to be a covered rail carrier employer under the RRA and RUIA effective April 1, 1966, the date on which it commenced railroad operations.

In response to a letter dated December 12, 2006, from the Board's Audit and Compliance Division, requesting information regarding NRRC, Mr. Scott F. Wilkinson, Assistant General Tax Attorney for Norfolk Southern Corporation (NS), advised that NRRC was merged into the Cincinnati, New Orleans and Texas Pacific Railway Company (CNO&TP) on May 9, 1975. According to Mr. Wilkinson, CNO&TP received all of the assets of NRRC upon the merger and NRRC ceased to exist as a separate legal entity. This was also set forth in the Certificate of Merger, approved March 27, 1970, provided by Mr. Wilkinson, which stated ". . .CNO&TP . . . [and] NRR[C] . . . shall merge pursuant to applicable state laws and Section 5 of the Interstate Commerce Act. CNO&TP, an Ohio corporation, shall be the surviving corporation." Mr. Wilkinson was unable to determine when NRRC last compensated its employees prior to the merger in 1975 with CNO&TP.

Section 202.11 (20 CFR 202.11) of the Board's regulations states 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.

Also, section 1(a)(1) of the RRA defines the term "employer" to include:

(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)].

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Section 1 of the RUIA contains the same definition.

The information summarized above indicates that, due to its merger with CNO&TP, NRRC no longer exists and thus no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective with the close of business on May 19, 1975, the date of the merger with CNO&TP, the New River Railway Company (NRRC) ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

Original signed by:

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board