

EMPLOYER STATUS DETERMINATION**St. Marys Railway West, LLC**

This is the determination of the Railroad Retirement Board concerning the status of St. Marys Railway West, LLC (SMRW), 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.).

According to a Surface Transportation Board (STB) decision dated June 4, 2004 (STB Docket No. AB-55 (Sub-No. 640) CSX Transportation, Inc. (CSXT), an employer under the Acts (B.A. No. 1524), was granted authority to abandon and discontinue service over a 23.25 mile portion of its line extending from Waresboro to Pearson, Georgia. The abandonment authorization was scheduled to become effective on January 23, 2004, unless an offer of financial assistance (OFA) was filed on or before January 5, 2004.

On January 2, 2004, St. Marys Railroad Company (SMR) (an employer under the Acts¹) timely filed an OFA under 49 U.S.C. 10904 and 49 C.F.R. 1152.27 to purchase the line. SMR was found to be financially responsible to acquire and operate the line and the effective date of the decision authorizing the abandonment was postponed to permit the OFA process to proceed.

On April 2, 2004, SMR filed a motion requesting permission to substitute its corporate affiliate, St. Marys Railway West, LLC (SMRW) as the purchaser of the line². SMRW submitted a letter dated May 28, 2004, in which the mayor of the city of Pearson, Georgia indicated that Pearson would purchase a 40% interest in SMRW and would undertake to fund the purchase price of the line, as well as other expenses associated with the transaction. The STB found that, as a political subdivision of the state of Georgia, Pearson is presumed to be financially responsible. By obtaining funding from a financially responsible entity, SMRW had

¹ In a decision dated January 15, 2003, the Board held that the coverage of St. Marys Railroad under the Acts was terminated as of March 31, 2000, and that Durango Railroad Corporation became an employer under the Acts as of April 1, 2000 (B.C.D. 03-5). This ruling was based on information submitted by the president and chief executive officer of St. Marys. In a letter dated March 25, 2004, Thomas McFarland, counsel for St. Marys, advised that Durango Railroad Corporation never operated and was never incorporated. Based upon this new information, the Board reopened its decision in B.C.D. No. 03-5 and canceled that decision. In B.C.D. 04-55, dated November 16, 2004, the Board found that St. Marys Railroad continues to be a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The determination that Durango is an employer under the Acts was revoked.

² Under 49 C.F.R. 1152.27(i)(1), an offeror is permitted to substitute its corporate affiliate as the purchaser provided that the STB has determined that either 1) the original offeror has guaranteed the financial responsibility of its affiliate, or 2) the affiliate has demonstrated financial responsibility in its own right.

shown itself to be financially responsible in its own right, and therefore the STB permitted the substitution of SMRW for SMR.

Information about SMRW was initially provided to the agency by Mr. Dorsey Thigpen, General Manager of SMRW. In response to questions about SMRW, Mr. Thigpen stated that SMRW is owned by Claudius R. Strickland (who is also the Chief Executive Officer) and Hugh W. Roberts, and began operations of the 23.25 miles of track purchased from CSXT on June 4, 2004. SMRW interchanges with CSXT, and its operations are described as storing "approximately 900 railcars on our line. Our inbound freight traffic for 2007 totaled 222 cars. Our car cleaning facility cleaned 625 cars. SMW leases a spur track to a car repair company". Mr. Thigpen also stated that SMRW does no business with rail carriers, receives no revenue from rail carriers, and provides no services to rail carriers. Mr. Thigpen also stated that SMRW had no employees, but "independent contractors only".

In response to a letter dated October 8, 2008, from the agency's Audit and Compliance Division requesting additional information, Mr. Thigpen stated that SMRW purchased the line from CSXT without involvement from SMR. He further stated that "From the purchase date, SMRW has not been a corporate affiliate of St. Marys Railroad Company". Mr. Thigpen also stated that SMRW

began operations with approximately 40 long term storage cars and a transload customer that received (1) one car two times per month. We used an independent contract engineer for train service as there was only about 8 hours of service required per month. I handled the switches and made the couplings for the train service. SMRW has continued this program as we only require service on an as needed basis.

Another letter was sent to Mr. Thigpen on November 14, 2008, requesting additional information and clarification. According to information provided by Mr. Thigpen in a letter dated December 31, 2008, at the time SMR offered to purchase the line from CSXT, it, along with the paper mill at St. Marys, Georgia, was owned by Durango N.A. Mr. Strickland (CEO and one of the owners of SMRW) was Chief Operating Officer of SMR at the time. After SMR made the offer to purchase the line, Durango N.A. filed for bankruptcy, which meant the sale would not go through. Mr. Thigpen, who was City Clerk for the city of Pearson at the time, explained that the city council of the City of Pearson agreed to provide the funding for the purchase of the rail line by SMRW³. The City of Pearson

³ According to Mr. Thigpen, over 400 jobs located in the city of Pearson would be lost if the abandonment of the line was to proceed.

received a 40% share of SMRW, and the remaining 60% was with Mr. Strickland. Mr. Thigpen explained that SMR was not part of the purchase and was not affiliated in any way at the time of the purchase. Shortly after the purchase, Mr. Strickland ceased to be the Chief Operating Officer of SMR due to the bankruptcy of Durango N.A. Mr. Thigpen further stated that SMRW "has never reported to St. Marys Railroad Company or any of its representatives or affiliates".

Mr. Thigpen also explained that SMRW has used independent contractors "for train service and switching since we began operations on June 4, 2004". The independent contractors bill SMRW by invoice and they are paid by SMRW based upon the invoices. According to Mr. Thigpen, "SMRW does not have employees".

In response to questions about SMRW's revenues and services, Mr. Thigpen stated that

SMRW is a shortline railroad which connects to CSXT's largest switching yard (Rice yard) on the east coast. * * * Outbound freight is not one of our primary operations as we do not have any shippers. SMRW receives loaded freight cars inbound for two customers: AirGas and Cady Bag. On average AirGas receives 10 cars per month and Cady Bag receives 3 cars per month. These loaded cars are placed at a transloading site for their drivers to off-load railcars onto their trucks. Our biggest service is the storage of railcars and locomotives. At present we have about 121 locomotives in storage and 1900 railcars in storage.

In addition to the above, Mr. Thigpen stated that SMRW "has provided track space for railcar cleaning". CSXT delivers the cars which they want cleaned⁴ on an as needed basis. These services are also performed by independent contractors. The cleaning services are described as

Railcars for cleaning are received on inbound interchange, train crew provides switching, the cars are placed at the cleaning area, the independent contractor cleaning crew comes in and cleans the cars, after the cars are cleaned the train crew delivers the cars to outbound interchange.

According to Mr. Thigpen, it is estimated that 3% of SMRW's total business time is spent performing these cleaning services, and 9% of SMRW's revenue is received for these services.

⁴ Only hopper cars and box cars are cleaned on SMRW tracks.

In addition to the above, SMRW provides a leased space for a car repair company, Fitzgerald Railcar Services (FRS). This company is not an affiliate of SMRW. FRS:

desired to have a "fast track" repair facility on our line and we were able to accommodate them for the service that they provided to tank car and box car owners. * * * Railcars for FRS repair are received on inbound interchange, train crew provides switching, the cars are placed on the FRS leased repair track, FRS personnel complete the required repairs, FRS releases the cars back to SMRW and they are delivered to outbound interchange.

The rail carrier for the FRS cars is CSXT, and an estimated 5% of SMRW's total business time is spent providing these services. An estimated 2% of SMRW's total revenue is received for these services.

According to Mr. Thigpen, no other railroad has a financial interest in SMRW, either through direct or indirect stock ownership or as a parent corporation. No individual owns a controlling interest in SMRW and another railroad, and no SMRW officers or directors are officers or directors of any other rail carriers. SMRW owns one locomotive, a hyrail truck for track inspections, track maintenance equipment, track repair and maintenance service trucks, an excavator, backhoe, small tractor, and bulldozer.

On June 30, 2004, SMRW advised the STB that the parties had reached an agreement on the terms and conditions for purchase of the line. Accordingly, in an STB decision decided July 8, 2004, the STB found that under 49 U.S.C. 10904, "SMRW is authorized to acquire and operate the line" (STB Docket No. AB-55 (Sub-No. 640)).

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), which 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 * * *.

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).

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)).

As stated above, the OFA made by SMR was made pursuant to 49 U.S.C. 10904. Section 10904(f)(4)(A) provides that:

No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

This section indicates that the STB retains jurisdiction over the sold line, for a minimum of 5 years after the sale. The STB has jurisdiction over common carriers engaged in the interstate transportation of passengers or property by railroad pursuant to section 10501 of Title 49 of the United States Code. In this case, the information in the file indicates that SMRW is a common carrier, interchanging with CSXT, receiving loaded freight cars inbound for two customers, and delivering cars released by FRS to the outbound interchange. We therefore find that the evidence of record establishes that SMRW is a carrier operating in interstate commerce and is subject to the jurisdiction of the STB.

Accordingly, it is determined that SMRW 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 June 4, 2004, the date it began operations. The individuals which Mr. Thigpen calls

“independent contractors”, as well as Mr. Thigpen himself⁵, should be reported as employees of St. Marys Railway West, LLC, as of June 4, 2004, the date St. Marys Railway West, LLC began operations.

Original signed by:

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⁵ In his letter of October 27, 2008, Mr. Thigpen stated “I handled the switches and made the couplings for the train service”.