

B.C.D. 11-88

September 13, 2011

EMPLOYER STATUS DETERMINATION – DECISION ON RECONSIDERATION

St. Marys Railway West, LLC

This is the decision on reconsideration of the Railroad Retirement Board (“the Board”) of Board Coverage Decision (B.C.D.) 10-38, dated April 29, 2010, 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.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA) (collectively, “the Acts”).

In B.C.D. 10-38, the three-member Board determined that the evidence of record established 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 Board also found that individuals which were referred to as “independent contractors”, 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.

On April 8, 2011, SMRW filed with the Secretary to the Board a Petition for Reconsideration pursuant to 20 C.F.R. § 259.3(a)¹. In its petition, SMRW states that it does not appeal the finding that SMRW is a covered employer under the Acts. Instead, SMRW seeks reconsideration of the finding that the individuals providing services to SMRW who were referred to as independent contractors should be reported as employees of SMRW. SMRW has provided a list of individuals (“Exhibit A”) who SMRW argues should be considered employees of SMRW, and a list of individuals (“Exhibit B”) who SMRW argues “should be determined to be independent contractors”.

As SMRW does not contest the fact that it is an employer within the meaning of the Acts, B.C. D. 10-38 is affirmed. With respect to the status of individuals performing services for SMRW, the Board notes SMRW is essentially in the business of storing rail cars and locomotives. Its carrier business only consists of the receipt of approximately 13 cars a month from CSXT for two customers.

Section 202.3 of the Board’s regulations (20 CFR 202.3) provides that a company principally engaged in non-carrier business, but which also engages in carrier business (in this case the receipt of inbound freight) may petition the Board to segregate its carrier business so that only that identifiable enterprise is covered

¹ SMRW also requested an extension of time to file the requisite annual report of creditable service pending filing and disposition of SMRW’s request for reconsideration. That request is addressed in this reconsideration decision.

under the Acts. The Board considers SMRW's request for reconsideration as a request for segregation under the above-cited regulation. Based upon the information set forth in B.C.D. 10-38, the Board finds that SMRW is only an employer with respect to its carrier business as described above. Individuals performing services for SMRW with respect to its carrier business would be covered under the Acts in accordance with the definition of employee as set forth in sections 1(b) and 1(d)(1) of the RRA and sections 1(a) and 1(b) of the RUIA.

As an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts, SMRW is required to file returns of service and make such contributions as are required of employers under the Acts. In that respect, SMRW's request for an extension of time to file its annual report of creditable service and compensation of employees who performed compensated service is granted. SMRW may file its annual report following the issuance of this decision without fine or penalty for late filing.

B.C.D. No. 10-38 is affirmed in part and modified in part.

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Keever