

EMPLOYER STATUS DETERMINATION

Birmingham Southern Railroad Company (BSRC) (B.A. No. 4507)

Birmingham Terminal Railway, LLC (BTR)

This is a determination of the Railroad Retirement Board concerning the status of Birmingham Southern Railroad Company (BSRC) (B.A. No. 4507) and Birmingham Terminal Railway (BTR) as employers 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.).

In Surface Transportation Board (STB) Finance Docket Number 35578, service date January 13, 2012, BTR filed a verified notice of exemption to acquire from BSRC, and to operate approximately 75.59 miles of rail line, including all sidings and yard tracks as follows: (1) between milepost 0.0 at 34th Street in Ensley, Alabama, and mile post 4.7 at East Thomas, Alabama; (2) between milepost 0.0 at 34th Street in Ensley, Alabama and milepost 9.8 at Bessemer, Alabama; and (3) between milepost 0.0 at the Port Connection Switch at Crawford Street in Fairfield, Alabama, and milepost 18.85 at Birminghamport, Alabama.

Information regarding BSRC was furnished by Mr. Robert N. Gentile, Associate General Counsel for United States Steel. According to Mr. Gentile, BSRC no longer provides rail services. Mr. Gentile stated that on January 31, 2012, BTR purchased substantially all of the assets of BSRC, including, but not limited to, its rail lines. BSRC rail operations ceased at 23:30 hours (11:30 PM) on January 31, 2012, in preparations for transferring rail operations to BTR at 00:01 (12:01 AM) on February 1, 2012, according to Mr. Gentile. Mr. Gentile stated that active employees of BSRC were compensated through January 31, 2012. According to Mr. Gentile, BSRC still has a small number of locomotives and rail cars, however none of this equipment is being used by BSRC for rail operations. Additionally, BSRC has not been formally dissolved and will remain a corporate entity for some undetermined period of time, according to Mr. Gentile.

Information regarding BTR was furnished by Mr. Craig R. Richey. According to Mr. Richey, the Chief Executive Officer of BTR is Mr. Richard B. Webb. BTR is owned by Watco Transportation Services, LLC (B.A. No. 9848). Mr. Richey stated that BTR began operations on February 1, 2012 and consists of 75.9 miles of track with two terminal points at Ensley, Alabama and Fairfield, Alabama. Mr. Richey stated that BTR has 112 employees who were initially compensated on February 2, 2012. Mr. Richey stated that BTR interchanges with BNSF Railway (BNSF)(B.A. 1012), CSX Transportation (CSXT) (B.A. No. 1524) and Norfolk Southern (NS) (B.A. 1525). According to Mr. Richey, BTR will serve more than 30 customers shipping steel, coal, ore and coke, and expects to ship approximately 70,000 carloads of freight this year.

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)].

The information summarized above indicates that, due to the purchase of BSRC on January 31, 2012, the evidence of record establishes that BSRC no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective January 31, 2012, the effective date of the sale of BSRC, Birmingham Southern Railroad Company ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Act. Additionally, the Board finds that Birmingham Terminal Railway, LLC became a covered rail employer under the Railroad Retirement and Railroad unemployment Insurance Acts effective February 1, 2012, the date railroad operations began.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board