

B.C.D. 12-43

November 16, 2012

EMPLOYER STATUS DETERMINATION

Roaring Fork Railroad Holding Authority (RFRHA) B.A.No. 2784

This is a determination of the Railroad Retirement Board concerning the continuing status of Roaring Fork Railroad Holding Authority (RFRHA) (BA No. 2784) 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.).

In B.C.D. 97-111, RFRHA was determined to be an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act effective June 30, 1997, the date operations began.

In Surface Transportation Board (STB) Finance Docket Number 34532, decided August 16, 2004, the Roaring Fork Transportation Authority (RFTA), a governmental entity formed to operate transportation facilities in the State of Colorado, filed a verified notice of exemption to acquire from RFRHA all of RFRHA's rights to reactivate rail service on RFRHA's line between milepost 360.22 in Glenwood Springs, Colorado and milepost 393.66, near Woody Creek, Colorado, a distance of 33.44 miles.

In a decision and notice of interim trail use or abandonment in *Roaring Fork Railroad Holding Authority – Abandonment Exemption – in Garfield, Eagle, and Pitkin Counties, CO*, STB Docket No. AB-547X (STB served Oct. 16, 1998), RFRHA was authorized to abandon the line and rail bank the right-of-way in its own name. In a decision served on November 30, 2001, in that proceeding, the STB granted the substitution of RFTA as the interim trail manager. RFRHA subsequently transferred all of its rights in the line, as well as ownership of the line to the RFTA.

In a letter dated November 29, 2004, Mr. Dan Blankenship, Chief Executive Officer of RFTA, stated that RFRHA previously owned a 34-mile segment of the Rio Grande rail corridor, between Glenwood Springs, Colorado and Woody Creek, in Pitkin County, Colorado, which was purchased from the Southern Pacific Railroad in 1997 by a consortium of local governments that had established RFRHA for that purpose. Mr. Blankenship stated that, because RFRHA had purchased an active rail line, but had no imminent plans to operate freight rail service, it applied for and received an exemption from the STB to Railbank the line in 1998. According to Mr. Blankenship, notwithstanding the Railbanked status of the corridor, RFRHA retained the right to reactivate freight rail service.

Mr. Blankenship stated that in November 2000, voters in seven jurisdictions approved the creation of RFTA. The seven constituent government members of RFTA were identical to the members of the RFRHA. To reduce duplication of effort, RFRHA agreed to assign all of its rights, privileges, assets, liabilities and obligations to RFTA as of November 15, 2001, at which time RFRHA was dissolved. Mr. Blankenship stated that concurrently, RFTA applied to the STB for, and received, a transfer of the line's Railbanked status from RFRHA to RFTA.

In 2004, RFTA learned that a formal application to the STB for the transfer of the right to reactivate freight rail service was necessary, according to Mr. Blankenship. Mr. Blankenship stated that, because it was the intent of RFRHA and RFTA that all of the rights, privileges, assets, liabilities and obligations be transferred from RFRHA and assumed by RFTA, in the summer of 2004 RFTA formally requested that the STB transfer the right to reactivate freight rail service on the corridor from RFRHA (which had been dissolved) to RFTA in order to preserve that right. Mr. Blankenship stated that the STB subsequently approved this transfer.

Mr. Blankenship stated in his November 29, 2004 letter that, while RFTA does want to preserve the right to reactivate freight rail services, it is not currently operating freight rail service and that it does not have any plans at present or in the foreseeable future to do so. In a letter dated July 20, 2012, Mr. Blankenship again confirmed that RFTA is not currently, and has no immediate plans to operate active rail service on the Rio Grande rail corridor that it owns.

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.

The evidence of record establishes that RFRHA no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective November 15, 2001, the date of dissolution, Roaring Fork Railroad Holding Authority ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board