B.C.D. 00-40

EMPLOYER STATUS DETERMINATIONS
Bad Water Line (BWL)
Bad Water Railway, LLC (BWR-LLC)

OCT 04 2000

This is the determination of the Railroad Retirement Board concerning the continued status of Bad Water Line (BWL), BA No. 3768, and the current status of Bad Water Railway, LLC, (BWR-LLC) as employers 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).

BWL operated approximately 26.6 miles of rail line between Shobon, Wyoming and Riverton, Wyoming. In Board Notice No. 89-82, BWL was found to be a covered railroad employer effective August 22, 1989.

Information regarding BWL and BWR-LLC was furnished by Mr. Steven W. Herkal, Executive Vice President of BWR-LLC. According to Mr. Herkal, employees of BWL last performed compensated service on April 30, 2000. Mr. Herkal stated that BWR-LLC commenced business on May 1, 2000. According to Mr. Herkal, "BWL's assets were issued to the LLC for ownership interest in the LLC. BWL then owns 100% of LLC." In a letter dated June 28, 2000, Mr. Herkal stated that although Articles of Dissolution had not yet been completed for BWL, the attorneys and accountants for BWL were currently in the process of completing them. Mr. Herkal stated that no merger was taking place, but that "a new entity totally independent as to payroll reporting and tax filing" was being created and further, that "the decision to dissolve BWL and continue business as Bad Water Railway, LLC was a business & tax decision based upon future opportunities and projections."

According to Mr. Herkal, BWR-LLC is a limited liability company and will elect to be treated as a partnership for federal tax purposes. Mr. Ron Vosika and Mr. Jim King serve as Chief Executive Officers of BWR-LLC. Mr. Herkal stated the ownership of BWR-LLC as follows: Ron Vosika 29%, Jim King 29%, Linda Vosika 12 %, Linda King 12%, Cliff Root 7%, Steve Herkal 6%, and Tom Kasper 5%. These individuals also own respective interests in BT, Inc. a trucking company. Mr. Herkal stated that BWR-LLC currently operates 3.5 miles of track running from Shobon, Wyoming to Shoshoni, Wyoming and moves commodities such as molten sulfur, sand, spent acid, ammonium nitrate, and lime. BWR-LLC's annual volume is approximately 2500 to 3000 railcars. BWR-LLC interchanges with the Burlington Northern Santa Fe Railroad (B. A. No. 1621). The five employees of BWL became employees of BWR-LLC as May 1, 2000, and their payroll and earnings reports were assumed by BWR-LLC on that date.

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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)].

* * * * *

Section 1 of the RUIA contains the same definition.

The information summarized above indicates that BWL no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective with the close of business on April 30, 2000, the date BWL last compensated its employees, the Bad Water Line ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Additionally, the Board finds that Bad Water Railway, LLC became a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective May 1, 2000, the date operations began and employees were first compensated. BWR-LLC has been preassigned BA No. 2792.

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