B.C.D. 00-53

NOV 27 2000

EMPLOYER STATUS DETERMINATION
Delta Southern Railroad Company
Delta Southern Railroad, Inc.

This is the determination of the Railroad Retirement Board concerning the continuing status of Delta Southern Railroad Company (DSRC) (BA No. 2860) 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). DSRC was found to be an employer effective January 3, 1989. This is also the determination of the Railroad Retirement Board as to the employer status of Delta Southern Railroad, Inc. (DSRI) under the aforesaid Acts. DSRI was not heretofore determined to be an employer.

On October 1, 1999, DSRI filed a verified notice of exemption with the Surface Transportation Board to acquire and operate all of the assets of DSRC, including leaseholds. See STB Finance Docket No. 33802, decided October 12, 1999. On January 3, 2000, DSRC and DSRI executed a purchase and sales agreement which completed the entire acquisition set forth in the aforesaid verified notice of exemption. Effective January 3, 2000, DSRC last compensated its employees and ceased operations and DSRI began actual operations. DSRC, as of January 3, 2000, no longer owns equipment or track and is now not capable of operating a railroad. According to William P. Wainright, former Chief Executive Officer of DSRC and now President and Chief Executive Officer of DSRI, both DSRC and DSRI are exactly the same except for the name change. However, in view of the fact that a new corporation known as DSRI was formed on September 3, 1999, it is clear that, not only has the name changed from DSRC to DSRI, but also that a new entity was created, and that new entity is legally separate and distinct from the other, notwithstanding the fact that there was no change in actual operations. Therefore, a new employer status determination is required for DSRI.

As it was with DSRC, DSRI has terminal points at Tallulah and Sterlington, Louisiana, and McGehee and Monticello, Arkansas, with appropriately 150 miles of track. DSRI interchanges with Union Pacific Railroad at McGehee, Arkansas and Monroe, Louisiana; and with Kansas City Southern Railroad at Tallulah, Louisiana.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), 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 the subtitle IV of Title 49 United States Code.

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The evidence of record establishes that DSRI is a rail carrier operating in interstate commerce. Accordingly, it is determined that DSRI became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. §231(a)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective January 3, 2000, the date as of which it commenced operations. The evidence of record further establishes that DSRC ceased to be an employer under the Acts administered by the Board on January 3, 2000, the date on which it ceased operations and was no longer capable of operating as a railroad employer.

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever