B.C.D. 05-50

NOV 29 2005

EMPLOYER STATUS DETERMINATION
Midland Railroad Enterprises Corporation

This is a determination of the Railroad Retirement Board concerning the status of Midland Railroad Enterprises Corporation (Midland) 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).

According to Mr. Torgny Nilssen, General Counsel for Sierra Railroad Company (B.A No. 2774), Sierra Railroad Company acquired Midland on January 1, 2003. Mr. Nilssen stated that Mr. David Magaw serves as president for Midland, Mendocino Railway[1] and Sierra Northern Railway.[2] The information further notes that Mr. Larry Ingold serves as vice president of Midland and Sierra Northern Railway . Mr. Robert McLean , Mr. Magaw, and Mr. Ingold also serve as directors of Midland and Sierra Northern Railway. Mr. Nilssen further stated that Midland currently has nine employees who were first compensated on March 1, 2004. Seventy-eight percent of Midland's employees devote at least a portion of their duties to railroad construction or rail maintenance. Midland provides regular maintenance of way and maintenance of equipment service for Mendocino Railway. Midland also provides services including maintenance, repair, construction and dismantling of railroad tracks, crossings, bridges, and signals to other companies including railroads and non-railroads. Mr. Nilssen stated that 70% of Midland's business is provided to Mendocino Railway and 17% is provided to Sierra Northern Railway.

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:

---

[1] The status of Mendocino Railway is currently being reviewed by the Board's Audit and Compliance Section.

[2] In a letter dated September 15, 2003, Mr. Magaw advised the Board's Chief of Audit and Compliance that Sierra Railroad Company (SRC) did not cease operation. Mr. Magaw stated that Yolo Shortline Railroad Company (B.A. No. 3782) is now known as Sierra Northern Railway. Mr. Magaw also stated that SRC's operations and employees' compensation would be reported under Sierra Northern Railway, B. A. No. 3782, and that Sierra Northern Railway is a subsidiary of Sierra Railroad Company.

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions.

There is no question that Midland is itself not a carrier by rail. We find that Midland is owned by Sierra Railroad Company, a covered rail carrier employer. In determining whether Midland is an employer under section 1(a)(1)(ii) of the Act, we must determine whether Midland "operates any equipment ... or performs any service..." in connection with railroad transportation. In considering questions of coverage within the meaning of section 1(a)(1)(ii), courts have generally looked to the type of service being provided, the amount of work being performed for the railroad affiliate, and the amount of work being performed for the railroad industry.

The regulations of the Board provide that service rendered by a carrier affiliate is in connection with the transportation of property by railroad if such service is reasonably directly related, functionally or economically, to the performance of obligations which a company has undertaken as a common carrier by railroad, or to the handling of property transported by railroad. See 20 CFR 202.7. As noted above, Midland provides regular maintenance of way and maintenance of equipment service and railroad construction services. Specifically, nearly 90% of Midland's services are performed for its affiliates, with 17% of its business being performed for Sierra Northern Railway. See, Livingston Rebuild Ctr. v. Railroad Retirement Board, 970 F. 2d 295, 298 (7th Cir, 1992) (where a company derives 95 percent of its locomotive and rail car repair business from its rail carrier affiliate, the company performs a service in connection with rail transportation

under the Acts). Accordingly, the Board finds that Midland performs a service in connection with rail transportation.

It is therefore the determination of the Board that Midland Railroad Enterprises Corporation became a covered employer under the Acts effective March 1, 2004, the date it began operations and first compensated its employees.

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever