

B.C.D. 12-38

October 9, 2012

EMPLOYER STATUS DETERMINATION

Manning Rail, Inc.

This is the determination of the Railroad Retirement Board concerning the status of Manning Rail, Inc. (MRI), 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.).

Information regarding MRI was provided by Kent C. Manning, owner and Chief Executive Officer of MRI. According to Mr. Manning, MRI was incorporated on April 26, 2012 and began operations on May 4, 2012. No employees have been compensated by MRI as of May 4, 2012. Mr. Manning states that he owns Manning Grain Company (MGC). MGC purchased 7 miles of railroad track believed to be abandoned from the Fillmore Western Railway which goes by MGC's grain elevator. He had only maintained the property until April 2012 when he incorporated the property into MRI. MRI is trying to get an interchange agreement in place with BNSF to interchange empty rail cars for storage on MRI track. MRI does not have full time employees but Mr. Manning states that if MGC employees work on the railroad, they will separate out their time and record it on the payroll.

In Surface Transportation Board Finance Docket No. 35612, MGC filed a verified notice of exemption to acquire from Fillmore Western Railway Company (FWRC), a covered employer from 1996 to 1999 (BA No. 3670), and operate a 7.1-mile rail line between its point of connection with BNSF Railway Company (BA No. 1621) at milepost 8.1 at or near Fairmont and terminus at milepost 15.2 at or near Burrell, Nebraska. The line is part of an approximate 23.3-mile rail line that FWRC was authorized to abandon. MGC states that it believed that at the time of acquisition, it was acquiring the line as a private industrial track. It has since learned that FWRC did not consummate its abandonment authority by filing a notice of consummation. Therefore, "it unknowingly became a rail carrier by virtue of its 2005 acquisition of the line." STB Finance Docket No. 35612. In turn, in Surface Transportation Board Finance Docket No. 35607, MRI filed a notice of exemption to acquire and operate the rail line from MGC.

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 subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that MRI is a carrier operating in interstate commerce subject to STB jurisdiction. Accordingly, it is determined that MRI is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of May 4, 2012, the date it began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board