

B.C.D. 13-08

March 20, 2013

EMPLOYER STATUS DETERMINATION

Denver & Rio Grande Railway Historical Foundation (D&RGHF) d/b/a Denver & Rio Grande Railroad, L.L.C.

This is a determination of the Railroad Retirement Board concerning the status of the Denver & Rio Grande Railway Historical Foundation (D&RGHF) d/b/a Denver & Rio Grande Railroad, L.L.C. 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 Surface Transportation Board (STB) Finance Docket No. AB-33 (Sub-No. 132X), decided May 6, 1999, Union Pacific Railroad Company (UP) (B.A. No. 1713) filed a verified notice of exemption to abandon and discontinue service over a 21.6-mile line of railroad known as the Creede Branch, extending from milepost 299.3 near Derrick to the end of the line at milepost 320.9 at Creede, in Rio Grande and Mineral Counties, Colorado. An offer of financial assistance was filed by D&RGHF. UP accepted the offer and advised the STB that UP and D&RGHF had reached an agreement for the purchase and sale of the rail line.

Information regarding D&RGHF was furnished by Mr. Donald H. Shank, President and CEO of D&RGHF. In a letter dated September 7, 2012, Mr. Shank stated that D&RGHF is an IRS 501(c) (3) public charity, incorporated in the State of Colorado, which is governed by a Board of Directors. According to Mr. Shank, on May 24, 2000, D&RGHF purchased a rail line from the UP and limited operations, using solely volunteer labor, began on May 26, 2009. Mr. Shank stated that D&RGHF's track extends 20 miles from South Fork, Colorado (Derrick) milepost 299.30 to Willow Creek, Colorado (Creede) at milepost 319.92. D&RGHF currently employs two part-time employees who were first compensated on July 1, 2012. Mr. Shank stated that D&RGHF's track connects with the San Luis & Rio Grande Railroad (SLRG) (B.A. No. 3796), a wholly owned subsidiary of Iowa Pacific Holdings, at Derrick, Colorado (South Fork, Colorado) at milepost 319.30. According to Mr. Shank, D&RGHF currently operates the entire 20 miles of track from South Fork to Willow Creek, Colorado for carload and less-than-carload freight, and for summer passenger excursions. Mr. Shank stated that from the start of the line's acquisition in 2000, to the date of his letter (September 7, 2012), D&RGHF has held itself out to the public as the sole provider of rail freight services along the line and that no customer of Denver & Rio Grande Railway Historical Foundation (D&RGHF) d/b/a Denver & Rio Grande Railroad, L.L.C., had requested full carload service. Mr. Shank stated that

starting in 2011 D&RGHF began providing less-than-carload rail freight service. The service encompassed the movement of recreational vessels between South Fork and Wagon Wheel Gap, Colorado. Mr. Shank stated that total freight revenue for calendar year 2011 was approximately \$850.00. Mr. Shank stated that the D&RGHF has reached a tentative agreement with another entity to permit that entity to act as the “designated freight carrier” for the line. Mr. Shank further stated that the proposed transaction is not anticipated to be an exclusive operating agreement and that D&RGHF will retain the ability to provide limited rail freight services and will also retain a residual common carrier obligation for those services that the designated freight carrier may be permitted to provide. Mr. Shank stated that D&RGHF is retaining certain responsibilities including dispatching of the line and track maintenance and that employees performing those tasks will be supporting not only D&RGHF’s passenger operations, but also the operations of the designated freight carrier as well. D&RGHF will also be retaining the exclusive right to provide all LCL service over the line.

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.

Section 1 of the RUIA contains essentially the same definition. (45 U.S.C. § 351.

The evidence of record establishes that D&RGHF is a line haul rail carrier operating in interstate commerce. Accordingly, it is determined that the Denver & Rio Grande Railway Historical Foundation (D&RGHF) d/b/a Denver & Rio Grande Railroad, L.L.C., became 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 effective May 26, 2009, the date as of which it commenced operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board