

EMPLOYER STATUS DETERMINATION**Vaughan Railroad Company**

This is the determination of the Railroad Retirement Board concerning the status of Vaughan Railroad Company (Vaughan) 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).

In a response dated February 15, 2012 and follow-up information provided in a letter dated July 12, 2012, Vaughan provided information through Michael J. Baker on behalf of Attorney Michael D. McLean, Senior Counsel for Vaughan. Vaughn is owned by AMVEST Coal & Rail, LLC and the president is Bart J. Hyita. Mr. Baker reports that Vaughan owns 14 miles of railroad track and 2 miles of turnaround with terminal points in Belva and Fola. The line was installed when mining operations began in 1994-1995 and operations began in July 1995. Norfolk Southern Railway (BA No. 1522) and CSX Transportation (BA No. 1524) are solely responsible for the operations, capital, and maintenance repairs and costs associated with Vaughan. This is split on a pro-rata basis on the tops shipped by the respective railroads. Vaughan does not profit from the operation or other railroad operations. Although it retains the capacity to operate the line, it does not own any equipment to that end. Norfolk Southern and CSX use the line for the transportation of coal and Norfolk Southern also transports ammonium nitrate. Vaughan has several affiliated companies, none of which are covered employers¹. Those affiliate companies' primary business purposes are land holding and leasing minerals to mining affiliates. Mr. Baker reports that Vaughan has no employees.

In Interstate Commerce Commission Finance Docket No. 22322, Vaughan was exempted from prior approval to construct 7.3 miles of rail line in Nicholas and Fayette Counties, West Virginia between the point of connection with its existing line near Vaughan and the site (north and east) of a proposed coal loadout facility and preparation plant to be owned by Fola Coal Company. Also contemplated was the construction of a segment of line less than one-half mile long connecting the extended line with Consolidated Rail Corporation's (BA No. 1321) line in Belva West Virginia. In a Verified Petition for an Exemption submitted to the Surface Transportation Board (STB), Vaughan stated that it was, "a West Virginia corporation formed in 1993 to assume common carrier responsibility for operation of a former CSX branch line, which CSX had proposed to abandon". In Surface Transportation Board Finance Docket No. 35131, it states that Vaughan requested an exemption to construct and operate a 5.55-mile rail line all in Monongalia

¹ Affiliate companies are: Nicholas-Clay Land & Mineral, Inc.; TECPART Corporation; TEAGLE Company LLC and; Braxton-Clay Land & Mineral, Inc.

County, West Virginia, between a connection with an existing rail line of Norfolk Southern and a new coal mine under development by Wolfpen Knob Development Company near Wadestown, West Virginia. The proposed line would connect with Norfolk Southern's Wana Spur just south of the Pennsylvania-West Virginia border at Norfolk Southern milepost 0.55 and eventually reach a loading loop track that would be adjacent to the new mine. Following completion of the proposed line, Vaughan anticipated that Norfolk Southern would assume operating responsibility for the line to the new mine.

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).

In its decision regarding the employer status of Railroad Ventures, Inc. (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this test to the facts at hand, the Board determines that Vaughan is not an employer covered under the Acts. The Board finds that the primary business purpose of Vaughan is not to profit from railroad activities. The evidence of record shows that the main purpose of Vaughan has been to preserve a line that would otherwise have been abandoned in order to maintain access to mines located on lands owned by affiliate companies. To that end, Vaughan gains no profit from operations and has no employees. The second part of the Railroad Ventures test is satisfied, inasmuch as Vaughan owns no rail equipment as well as no employees and therefore does not have the capacity to operate the line. Finally, it satisfies the third part of the Railroad Ventures test as the railroad operations that are conducted

in this case are done by Norfolk Southern and CSX, both rail carrier employers covered by the Acts.

Based upon the information summarized above, and consistent with the holdings in B.C.D. 00-47², it is the decision of the Railroad Retirement Board that Vaughan Railroad Company is not an employer under the RRA and RUIA.

Original signed by:

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² In addition, the Board has ruled that in the case of a company which merely has a leasehold interest and contracts with another company to operate rail carrier service over its line, the company which contracts for performance of the rail carrier service is not a rail carrier employer under the Acts. See, B.C.D. 94-38, Lackawanna Railway, Incorporated, citing, *Appeal of Board of Trustees of Galveston Wharves, Board Order 89-74*.