

B.C.D. 15-10

May 7, 2015

**EMPLOYER STATUS DETERMINATION
MVC Transportation, LLC (MVCT)**

This is a determination of the Railroad Retirement Board concerning the continuing status of MVC Transportation, LLC (MVCT) 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.) (collectively, the “Acts”).

MVCT (B.A. # 9019) has been an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act since April 21, 2004, the date from which MCVT was found to have STB approval to acquire and operate a 15 mile line of track in Allegheny County, Pennsylvania.

The coverage file indicates that MVCT sought to acquire the McKees Rocks Yard property and rail lines on April 21, 2004 from P&LE Properties, Inc. All common carrier railroad operations on the railroad facilities were to be provided by CSX Transportation, Inc. (B.A. No. 1524), a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. MCVT did not plan to have any paid employees.

According to the information provided by Mr. Richard Wilson, MVCT’s former counsel, MVCT never operated as a rail carrier. Subsequent to the Board’s determination in B.C.D. 04-46, MVC became involved in a dispute with Proline Railroad Track Co. (Proline) which challenged MVC’s acquisition of track in the McKees Rocks Yard. MVC responded by filing a petition for a declaratory order with the STB in the hope that the STB would rule that MVC had the right to the track. Proline then filed a petition asking the STB to revoke MVC’s previous exemption to operate the track. The STB declined MVC’s petition for a declaratory order and denied Proline’s petition to revoke MVC’s exemption to operate the track. The STB decided that the Pennsylvania court was the proper forum to resolve the ownership of the track dispute (see STB Finance Docket No.34462, decided October 20, 2004).

The Allegheny Court of Common Pleas sitting in Allegheny, Pennsylvania, approved a settlement finding Proline was the owner of the rail line and that through the settlement agreement, Proline had the right to sell operation of the McKees Rocks Yard to a separate entity, Atlantic Track and Turnout

Company. The Court ruled that MVCT had all of its claims to the McKees Rocks Yard extinguished. Mr. Richard Wilson also reported that the principal owner of MVCT died shortly after the court case was finalized.

Section 202.11 (20 CFR 202.11) of the Board's regulations states that:

The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

Information in our coverage files indicates that MVCT was formed with the intent to operate approximately 15 miles of rail lines located in Allegheny County, Pennsylvania, from P&LE Properties, Inc. (P&LE). See STB Finance Docket No. 34462, decided April 21, 2004. A subsequent Court decision nullified the acquisition and MVCT never performed any railroad operations nor owned any line of track. The evidence of record indicates MVCT does not own any track upon which to perform railroad operations in the future. MVCT has not functioned as a rail carrier and does not possess the characteristics of a railroad carrier employer.

The Board therefore finds that effective September 19, 2006, the date that the Pennsylvania court approved the settlement giving right to Proline to sell the track to Atlantic, MVCT ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board