

**B.C.D. 15-29**

**December 18, 2015**

**EMPLOYER STATUS DETERMINATION**

**Lewis and Clark Railway Company (LCR)**

This is a determination of the Railroad Retirement Board concerning the status of Lewis and Clark Railway Company (LCR) 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.).

LCR (BA No. 3660) has been an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act since May 1, 1987, the first day of the month in which LCR commenced operations, as found in Board Notice 88-62 on November 16, 1988.

LCR formerly leased and operated a line of railroad owned by Clark County, WA, between milepost 0.0 in Vancouver Junction, WA and milepost 33.10 in Chelatchie, WA. This lease was acquired in two segments and was originally approved in Interstate Commerce Commission Finance Docket No. 31042 (ICC served May 22, 1987) and Surface Transportation Board Finance Docket No. 33325 (STB served January 15, 1997). Edward Berntsen, President and General Manager of LCR, indicated in a letter dated November 14, 1996 that severe rainstorms had washed out the portion of rail line connecting LCR's line to the Burlington Northern Santa Fe (BA No. 1621), but that Clark County had taken ownership of the washed-out section and Mr. Berntsen expected regular freight traffic to resume in December 1996. However, Mr. Berntsen failed to respond to numerous subsequent requests for information regarding the status of LCR's operations over a number of years. On February 3, 2003, the Secretary to the Board issued a subpoena for records to Mr. Berntsen, which Mr. Berntsen also failed to respond to. LCR last filed a report of creditable compensation for employees on March 29, 2004, for calendar year 2003.

On March 11, 2004, Columbia Basin Railroad Company, Inc. (BA No. 2644) filed a Verified Notice of Exemption to lease and operate the rail line owned by Clark County and formerly operated by LCR (STB Finance Docket No. 34482). In its decision, the Surface Transportation Board noted that Clark County had notified LCR on January 30, 2004 that Columbia Basin Railroad Company would be the new operator of the line, and a letter from Clark County to the Surface Transportation Board dated February 18, 2004 confirmed that LCR's lease agreement had expired on January 31, 2004.

Railroad Retirement Board regulations at 20 CFR §202.11 state 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.

Board regulations at 20 CFR §202.12(b) indicate that "...stoppage of business or operations; ... the effective date of a certificate permitting abandonment; ... [and] discharge of last employee..." are included among the types of evidence to be considered when determining whether cessation of an essential characteristic has occurred. However, 20 CFR §202.12(a) states that "consideration will be given only to those events or actions which evidence a final or complete cessation."

The evidence of record establishes that LCR no longer possesses the characteristics of an operating railroad company. Specifically, the termination of LCR's lease agreement over LCR's only operating rail line, with authorization to operate issued to another covered railroad employer, is evidence of a final and complete cessation of activity as a covered employer under the Acts. Therefore, the Board finds that effective February 1, 2004, the first day after the expiration of LCR's rail line lease with Clark County, WA, LCR 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