

B.C.D. 16-05

February 24, 2016

EMPLOYER STATUS DETERMINATION

Brookhaven Terminal Operations, LLC (BTO)

d/b/a Brookhaven Rail Terminal

This is the determination of the Railroad Retirement Board concerning the status of Brookhaven Terminal Operations, LLC (BTO), 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 known as the Acts.

Information regarding BTO was supplied by Daniel K. Miller, Chief Financial Officer for BTO. Mr. Miller noted that the Railroad Retirement Board's letter addressed to Brookhaven Rail Terminal, which is the trade name for the site operated for BTO. BTO is a joint venture between Oakland Transportation Holdings, LLC (57.6%) and Sills Road Realty (42.4%). The joint venture and operations began on July 1, 2012. BTO interchanges with Brookhaven Rail, LLC (Brookhaven Rail), an employer covered under the Acts (BA No. 4118). Brookhaven Rail is wholly owned by Oakland Transportation Holdings, LLC, which as noted above, is the 57.6% owner of BTO, and was formerly known as US Rail New York, LLC.

Mr. Miller reports that the total length of track at the rail terminal is approximately 10,500 feet and has two terminal points: (1) Terminal Point Sills; and (2) tracks dead-end on BTO site, Yaphank, Long Island, New York. Brookhaven Rail operates the rail site and BTO provides transloading services for railcars that are interchanged at the terminal by Brookhaven Rail. BTO only conducts business with Brookhaven Rail and receives 100% of its revenue from Brookhaven Rail. Expected rail car volume for 2014 is 2,400. BTO employs 6 individuals, the first of which began being compensated on March 23, 2013.

In Surface Transportation Board (STB) Finance Docket No. 35141, US Rail Corporation (US Rail), a Class III rail carrier, filed a petition for exemption to construct and operate a line of railroad at a 28-acre site to be known as the Brookhaven Rail Terminal in Brookhaven, Suffolk County, New York. The total length of track to be constructed was 18,000 feet. The track would connect with an existing rail line of Long Island Rail Road, over which the New York & Atlantic Railway Company provides freight service. The purpose of the construction was to enable US Rail to serve the terminal as a common carrier and to deliver up to 500,000 tons of aggregate annually from sources in upstate New York to Sills Road Realty, LLC, the owner of the underlying property. In a decision issued September 7, 2010, the STB permitted US Rail to build and operate the rail line subject to

environmental mitigation conditions. In August 25, 2014, the STB decided a request to reopen the previously granted exemption to construct and operate the rail line. In that decision, it notes that US Rail assigned its construction and operation authority to US Rail New York, LLC, which was subsequently, renamed Brookhaven Rail, LLC. In addition, it states that Brookhaven Rail Terminal is the trade name for BTO. The decision states that Brookhaven Rail, a Class III rail carrier, now uses the line to provide service to BTO, a railroad transloading facility located on Parcel A. The STB denied the request to reopen the earlier decision to grant the exemption to operate but directed BTO and Brookhaven Rail to provide evidence that they have complied with environmental conditions.

In addition, in STB Finance Docket No. 35819, BTO and Brookhaven Rail filed a petition seeking issuance of a declaratory order finding that the 12,500 feet of rail track that BTO proposes to construct and operate in Yaphank, Suffolk County, New York is exempt from the STB's licensing and economic regulation and is not subject to state and local permitting and preclearance requirement due to Federal preemption. As the issue of Federal preemption is before a Federal Circuit Court, the STB held in abeyance the request for a declaratory order.

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;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

Section 1 of the RUIA contains essentially the same definitions, as does section

3231 of the Railroad Retirement Tax Act.

Based on the information summarized above, we find that BTO meets the first criteria of common control under section 1(a)(1)(ii) of the RRA in that through the mutual parent company of Oakland Transportation Holdings, LLC, it is under common control with Brookhaven Rail, a covered employer. It also meets the second criteria, in that BTO employees perform services in connection with the transportation of property by railroad as well as with the receipt, transit, and handling of property transported by railroad. This second finding is supported by the fact that BTO provides transloading services for railcars that are interchanged at the terminal by Brookhaven Rail and the fact that BTO only conducts business with Brookhaven Rail and receives 100% of its revenue from Brookhaven Rail.

In accordance with the above discussion we find that BTO is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. This decision is effective July 1, 2012, the date BTO began operations.

Original signed by:

Walter A. Barrows

Steven J. Anthony