

B.C.D. 16-19

August 8, 2016

**EMPLOYER STATUS DETERMINATION
Hainesport Secondary Railroad, LLC**

This is a determination of the Railroad Retirement Board concerning the status of Hainesport Secondary Railroad, LLC 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.*) (“the Acts”). The status of Hainesport Secondary Railroad, LLC under the Acts has not previously been considered.

Hainesport Secondary Railroad, LLC is a New Jersey limited liability corporation and new corporate affiliate of Hainesport Industrial Railroad, LLC. (HIR). HIR is a Class III railroad and a covered employer under the Acts.¹ HIR is owned by Tunnel Hill Partners, LP, a waste management firm.²

In Surface Transportation Board Finance Docket No. 35760 filed August 26, 2013, HIR filed a verified notice of exemption under 49 CFR §1180.2(d)(3) for a corporate family transaction exemption, pursuant to which HIR would transfer ownership and operation of a line of railroad in Hainesport, New Jersey to a corporate affiliate. HIR proposed to establish new corporate affiliate, Hainesport Secondary Railroad, LLC (HSRR) to own and operate HIR’s East Lines.³

Surface Transportation Board Finance Docket No. 35760 indicates that HSRR will own and operate the East Lines while HIR will continue to own and operate its South Line. HIR will enter into a haulage agreement with HSRR that provides for HSRR to move traffic between the South Line and the Conrail interchange on behalf of HIR. According to HIR, the purpose of the transaction is to allow HIR to separate the lines of railroad according to the types of traffic each handles, as well as to facilitate the sale of the South Line should HIR’s owners choose to sell that line in future. The HSRR East Lines will serve facilities owned or operated by Gallo, Independent Metal Associates, Inc., and Total Logistics, as well as an intermodal track utilized by Heritage Environmental Services and WasteQuip. Traffic currently handled on the East Lines includes wine, wallboard, lumber, rebar, and waste moving in its original shipping containers that arrive by truck and are transferred to waiting rail cars for further movement by rail. HSRR will also receive empty containers coming by rail and transfer them to waiting trucks for

¹ Board Coverage Decision 06-49 dated October 24, 2006.

² See Surface Transportation Board Finance Docket No. FD 35942, decided July 13, 2015.

³ HIR indicated in its verified notice of exemption that it was “spinning off” its East Line to its newly established affiliate, HSRR, while retaining its South Line. *FD 35760 Verified Notice of Exemption*, p. 6.

movement to the origin customer. HSRR's traffic will primarily be general commodities or containerized freight.

Ronald W. Bridges, Chief Executive Officer for Hainesport Secondary Railroad, LLC provided information regarding the formation and start of operations for HSRR. Mr. Bridges stated that he and Daryl Caplan were both 50% owners of HSRR. Mr. Bridges indicated that HSRR would interchange with Conrail and HIR, and that HSRR's operation included serving all rail customers in the Hainesport Industrial Park, as well as serving off-rail customers utilizing transload operations. Mr. Bridges indicated the expected annual rail freight volume for HSRR would be 800 carloads. Mr. Bridges also indicated that the length of track was approximately 1 mile, with terminal point in Hainesport, New Jersey, and that the line was acquired from HIR.

Mr. Bridges indicated that HSRR expected to begin operations on May 1, 2016. He further advised that HSRR would have four employees, and that three of those employees would be hired from the former operator of the rail line. In addition, Mr. Bridges indicated that the first day the employees would perform compensated service for HSRR would be May 1, 2016.

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 (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that HSRR is a rail carrier operating in interstate commerce. Accordingly, the Board finds that Hainesport Secondary Railroad, LLC became an employer within the meaning of section 1(a)(1) of the RRA and Section 1 of the RUIA effective May 1, 2016, the date on which it began operations.

Original signed by:

FOR THE BOARD
Martha P. Rico
Secretary to the Board