

## **EMPLOYER STATUS DETERMINATION**

Wabash & Western Railway d/b/a Michigan Southern Railroad

This is the determination of the Railroad Retirement Board concerning the status of Wabash & Western Railway d/b/a Michigan Southern Railroad (Michigan Southern) 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.).

Information regarding Michigan Southern was provided by Daniel A. LaKemper, General Counsel. According to Mr. LaKemper, Michigan Southern began doing business December 19, 1996, and currently has 8 employees. The first employee was compensated December 29, 1996. According to the Board's records, Mr. Guy L. Brenkman, the Chief Executive Officer of Michigan Southern, is also Chief Executive Officer of Pioneer Railroad Services, Inc. (a covered employer under the Acts reporting under BA No. 9744) and is President of Wabash & Western Railway.

In Surface Transportation Board (STB) Finance Docket 33306, the Wabash & Western Railway filed a notice of exemption to lease from Morris Leasing Company, Ltd. and Michigan Southern Railroad, Inc. a total of 49.6 route miles of rail line, between Kendallville and Elkhart in Indiana, and Coldwater and White Pigeon, Michigan. Michigan Southern interchanges with Conrail at White Pigeon, Elkhart and Kendallville, and with Indiana Northeastern Railroad at Coldwater. A footnote in the STB decision stated that for purposes of the lease transaction, Wabash and Western Railway was to enter an agreement with Morris Leasing Company, Ltd. and Michigan Southern Railroad, Inc. whereby Wabash and Western Railway would be permitted to do business under the trade name "Michigan Southern Railroad."

The evidence of record establishes that Wabash & Western Railway doing business as Michigan Southern Railroad is a carrier operating in interstate commerce. Accordingly, it is determined that Michigan Southern is an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231a(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of December 19, 1996, the date as of which it commenced operations.

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