

AUG 01 2002

EMPLOYER DETERMINATION
Dakota Rail, Inc.

This is a determination of the Railroad Retirement Board concerning the continued status of Dakota Rail, Inc. (DRI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). DRI has been a rail carrier employer under the Acts, with service creditable from April 1, 1982 (B.A. No. 3640).

In a Surface Transportation Board decision dated August 24, 2001 (Finance Docket No. AB-472 (Sub-No. 1X)), DRI filed a petition for exemption to abandon its entire rail line. The rail line is located at milepost 24.6, near Wayzata, to the end of the line at milepost 68.5, in Hutchinson, a distance of approximately 43.9 miles, in McLeod, Carver, and Hennepin Counties, Minnesota. DRI further sought exemption from statutory provisions concerning offer of financial assistance (OFA) and public use conditions. According to the STB decision, DRI contended that the exemption from the governing provisions was necessary to avoid delay in the sale of DRI's stock to McKnight Rail Road, L.L.C. (McKnight) and the anticipated donation by McKnight of portions of the line to various localities.

In an STB decision in docket no. AB-472 (Sub- No. 1X) dated December 27, 2001, the STB stated that in a decision served on November 30, 2001, the STB had exempted from the prior approval requirements of 49 U.S.C. 10903 the abandonment by DRI of its entire rail line. The decision further stated that the exemption was scheduled to become effective on December 30, 2001, unless an offer of financial assistance was filed on or before December 10, 2001. The STB decision stated further that on December 10, 2001, Hennepin County Regional Railroad Authority (HCRRA) filed an OFA to purchase the entire 43.9 rail line. By decision served on December 14, 2001, HCRRA was found to be financially responsible and the effective date of the decision authorizing abandonment of the line was postponed to permit the financial assistance process to proceed. By letter filed on December 20, 2001, DRI advised the STB that DRI and HCRRA had reached an agreement for HCRRA to acquire the line from DRI. Accordingly, in its decision of December 27, 2001, the STB dismissed the petition for exemption and authorized HCRRA to acquire DRI's rail line.¹

¹ The Board's Audit and Compliance Section is reviewing whether HCRRA may have become an employer under the RRA and RUIA.

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Information regarding DRI was provided by Mr. Gary Laakso, Vice President and Regulatory Counsel for RailAmerica and Pamela Slifka also with RailAmerica. According to Mr. Laasko, DRI last provided service in May 2000 and last compensated its employees on May 24, 2000. However, in an e-mail transmittal dated April 25, 2002, to the Board's Audit and Compliance section, Ms. Slifka stated that DRI last provided service in June 2000 and did not have any employees thereafter. Mr. Laasko stated that in December 2001, DRI sold its non-equipment assets to Hennepin County Regional Rail Authority. He further stated that DRI has not been dissolved as a corporation.

Section 202.11 states:

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.

The evidence clearly indicates that Dakota Rail, Inc. no longer possesses the characteristics of a covered railroad employer under the Acts. Therefore, effective June 30, 2000, the last day of the last month in which it ran a train, the Board finds that Dakota Rail, Inc. ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever