

JAN 05 2001

EMPLOYER STATUS DETERMINATIONS

Indiana Southern Railroad, Inc. (ISRR-IN)(B.A. No. 3382)

Indiana Southern Railroad, Inc. (ISRR-DEL)(Pre-assigned B.A. No. 5334)

This is the determination of the Railroad Retirement Board concerning the continued status of Indiana Southern Railroad, Inc. (ISRR-IN) (B.A. No. 3382), and the current status of Indiana Southern Railroad, Inc. (ISRR-DEL) as employers 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).

In Board Notice No. 92-43, ISRR-IN was previously found to be a covered rail carrier employer under the RRA and RUIA effective April 10, 1992, the date that it first compensated employees.

In Surface Transportation Board (STB) Finance Docket Number 33809, service date October 29, 1999, RailTex, Inc. (RailTex) (B. A. No. 6803), North Carolina & Virginia Railroad Company, Inc. (NCVA) (B. A. No. 5507), Chesapeake and Albemarle Railroad Company, Inc. (CARR) (B. A. No. 5531), Dallas, Garland & Northeastern Railroad, Inc. (DGNO) (B. A. No. 3890), Mid-Michigan Railroad, Inc. (MMRR) (B. A. No. 4268), and ISRR-IN filed a verified notice of exemption to achieve a proposed corporate restructuring. According to the STB decision, as part of the corporate restructuring: (1) the assets of DGNO and MMRR, including assets of the Texas Northeastern Division, a division of MMRR, would be merged into Dallas, Garland & Northeastern Railroad, Inc., a Delaware Division (DGNO Delaware), with DGNO Delaware as the surviving entity; (2) the assets of NCVA and CARR would be merged into North Carolina & Virginia Railroad Company, Inc., a Delaware corporation (NCVA Delaware), with NCVA Delaware as the surviving entity; and (3) ISRR-IN, an Indiana Corporation, would be reincorporated in the State of Delaware.¹ According to the STB decision, the purpose of the transaction was to simplify RailTex's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping, and reporting functions, as well as to allow for the reincorporation of additional RailTex subsidiaries in the State of Delaware, thereby simplifying RailTex's corporate governance. As a result of the restructuring, RailTex controlled 16 Class III railroads in the United States.

Information regarding ISRR-IN and ISRR-DEL was furnished by Ms. Kay Acuff, Payroll Supervisor for RailAmerica (B. A. No. 9409). According to Ms.

¹The status of DGNO, MMRR, DGNO Delaware, NCVA, CARR, and NCVA Delaware is addressed in separate coverage decisions.

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Acuff, employees of ISRR-IN last performed compensated service on September 29, 1999. Ms. Acuff provided information which shows that ISRR-IN's "merger" with ISRR-DEL (with ISRR-DEL as the surviving entity) became effective on September 30, 1999, when the Agreement and Plan of Merger between ISRR-IN and ISRR-DEL was filed with the Secretary of State of Delaware. All former employees of ISRR-IN became employees of ISRR-DEL as of the date of the merger, and their payroll and earnings reports were assumed by ISRR-DEL on that date.

Section 202.11 (20 CFR 202.11) of the Board's regulations states 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.

Also, section 1(a)(1) of the RRA defines the term "employer" to include:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of Title 49 [45 U.S.C. §231(a)(1)(i)].

* * * * *

Section 1 of the RUIA contains the same definition.

The information summarized above indicates that, due to the merger of ISRR-IN into and with ISRR-DEL, ISRR-IN no longer possesses the characteristics of an operating railroad company. The Board therefore finds that effective with the close of business on September 29, 1999, the date on which ISRR-IN last compensated its employees, the Indiana Southern Railroad, Inc. (Indiana Corporation) ceased being a covered employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Additionally, the Board finds that Indiana Southern Railroad, Inc. (Delaware Corporation) became a covered rail carrier employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective September 30, 1999, the date

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operations began and employees were first compensated. ISRR-DEL has been preassigned B. A. No. 5334.

Original signed by:

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