

EMPLOYER STATUS DETERMINATION

BCD 2022-28

Midway Southern Railway, Inc. (MWS)

B.A. No. 4121

July 21, 2022

This is a determination of the Railroad Retirement Board concerning Midway Southern Railway, Inc.'s (MWS) status as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) (collectively, "the Acts"). RRA, 45 U.S.C. § 231 *et seq.*; RUIA, 45 U.S.C. § 351 *et seq.* The status of MWS has not previously been considered.

Information on MWS was provided by its President, J. Thomas Garrett, in a letter dated September 14, 2021, along with a follow-up response letter dated April 5, 2022.¹ Mr. Garrett also provided a copy of a Terminal Services Agreement entered into by MWS and CSX Intermodal Terminals, Inc. (CSXIT) (B.A. No. 9250). Payton Wilson, Associate General Counsel for MWS also provided information by letter dated June 20, 2022. According to the information provided, MWS is a wholly owned subsidiary of P&L Transportation, Inc. (not a covered employer under the Acts). P&L Transportation Inc. is also the parent holding company for several covered employers including Evansville Western Railway, Inc. (B.A. No. 2399), Paducah & Louisville Railway, Inc. (B.A. No. 2580), Appalachian & Ohio Railroad, Inc. (B.A. No. 2417), and Four Rivers Finance Company, Inc. (B.A. No. 9367). CSX Transportation, Inc. (CSXT) (B.A. No. 1524) owns 35% of the common stock of P&L Transportation, Inc.

According to Mr. Garrett, MWS provides contract switching operations on non-regulated track at Bedford Park Intermodal Terminal (Bedford Park) and 59th Street Terminal (59th Street) in Bedford Park, IL. MWS's operation specifically consists of receiving trains that enter the terminal and switching cars onto various tracks for unloading. MWS also repositions cars within the terminal and makes up trains for departure. CSXIT leases the premises and all track and buildings comprising Bedford Park from its sister corporation, Atlantic Land and Improvement Company. CSXT owns the land and the tracks at 59th Street, which it leases to CSXIT. CSXIT owns and operates the Terminals at Bedford Park and 59th Street. MWS performs the switching operations at Bedford Park and 59th Street pursuant to the Terminal Services Agreement with CSXIT.

MWS initially reported that it had sixteen employees, fifteen of which were formerly employed by the previous contract operator, Chicago Rail Link (B.A. No. 4713). Mr. Garrett stated that these employees performed compensated services beginning on July 15, 2021, the date MWS

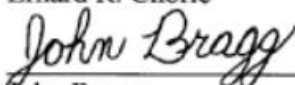
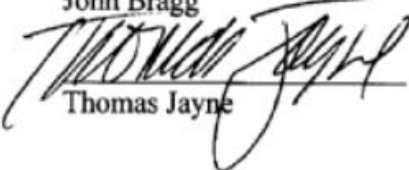
¹ On May 7, 2022, Mr. Garrett also provided a letter dated February 9, 2022, from the National Mediation Board (NMB). The letter states that the NMB exercised its jurisdiction over MWS by holding an election and certifying SMART-TD as the bargaining representative for MWS's employees. MWS argues that as the NMB determined that MWS is covered under the Railway Labor Act, which includes identical coverage language as is found in the RRA and RUIA, the RRB should not reach a contrary result. The NMB, established by the 1934 amendments to the Railway Labor Act of 1926, is an independent U.S. federal government agency that facilitates labor-management relations within the nation's railroads.

began operations.² MWS does business with both CSXT and BNSF Railway Company (B.A. No. 1621). MWS projects that it will switch 90,000 rail cars per year.

Under section 1(a)(1)(i) of the RRA, insofar as relevant here, a covered employer is defined as “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.” RRA § 1(a)(1)(i), 45 U.S.C. § 231(a)(1)(i). Section 1 of the RUIA and section 3231(a) of the Railroad Retirement Tax Act (RRTA) contain substantially similar definitions. RUIA § 1, 45 U.S.C. § 351; RRTA, 26 U.S.C. § 3231.

Under Part A of subtitle IV of title 49 of the United States Code, the Surface Transportation Board has jurisdiction over “transportation by rail carrier.” 49 U.S.C. § 10501(a). A “rail carrier” is defined as “a person providing common carrier railroad transportation for compensation.” 49 U.S.C. § 10102(5). The term “railroad” includes “a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation.” 49 U.S.C. § 10102(6)(C). The term “transportation” is defined to include not only a locomotive but also a facility or equipment of any kind related to the movement of property by rail, and services related to that movement, including receipt, delivery, transfer, and handling of property. 49 U.S.C. § 10102(9)(A), (B). MWS’s is engaged in the business of providing switching services in terminals for two Class I carriers. Accordingly, the evidence establishes that MWS is a rail carrier operating in interstate commerce by reason of the switching operations that it performs at the Bedford Park Intermodal Terminal and 59th Street Terminal.

Accordingly, it is determined that Midway Southern Railway, Inc. became an employer within the meaning of the Acts effective July 15, 2021, the date it began operations.


Erhard R. Chorlé

John Bragg

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² MWS currently has 22 employees.