

B.C.D. 17-24

April 4, 2017

EMPLOYER STATUS DETERMINATION

Kanawha River Railroad, L.L.C. (Kanawha)

BA # 5343

This is a determination of the Railroad Retirement Board concerning the status of Kanawha River Railroad, L.L.C. (Kanawha) 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.) (collectively, the Acts). The status of Kanawha under the Acts has not previously been considered.

In Surface Transportation Board (STB) Docket No. 36028, Kanawha filed a verified notice of exemption on July 1, 2016 to lease from Norfolk Southern Railway Company (NS) nine rail lines in West Virginia and Ohio.¹ Kanawha planned to lease and increase operations on 308.85 miles of rail line located in Ohio and West Virginia. The nine rail line segments leased by Kanawha are located between: (1) Milepost V 382.0 at Maben, WV, and Milepost V 435.0 at DB (Deepwater Bridge), WV; (2) Milepost RR 7.0 at Refugee, OH, and Milepost RR 116.5 at Hobson Yard, OH; (3) Milepost WV 125.6 at Conco, OH, and Milepost WV 253.4 at Cornelia, WV; (4) Milepost VC 0.0 at Vaco Junction, WV, and VC 0.84 at Deepwater, WV; (5) Hitop RT at Milepost TP 0.0 at Charleston, WV, and End of Track at TP 1.0; (6) Jones IT at Milepost JT 0.0 at Jones, WV, and End of Track at Milepost JT 1.3; (7) Milepost VG 0.0 at Virwest, WV, and Milepost VG 12.1 at Bolt, WV; (8) Milepost MY 0.0 at Milam, WV, and End of Track at MY 1.01; and (9) Milepost PE 0.0 at Putt, WV, to Milepost PE 2.3 at Putt End Branch, WV. Of this, 189 miles of the subject lines were in active service; the remainder of the track was idled or had been taken out of service by NS. Kanawha indicated in its filing that its projected annual revenues would exceed five million dollars.

Watco Holdings, Inc. (Watco), a company indirectly owning 100 percent of the issued and outstanding stock in Kanawha, also filed an amended Verified Notice of Exemption with the STB on July 1, 2016 in Docket No. 36029 to continue in control of Kanawha upon its becoming a Class III railroad. In an initial decision dated July 15, 2016, the STB granted Kanawha's request for exemption effective July 31, 2016.² Also on July 15, 2016, the STB granted Watco's request to continue in control of Kanawha effective July 31, 2016. Subsequently on August 5, 2016, the STB issued a clarification stating that

¹ The July 1, 2016 STB filing corrected and replaced an earlier June 28, 2016 STB filing that Kanawha withdrew.

² On August 1, 2016, the STB issued a correction to the notice of exemption because the incorrect regulation had been cited in the notice.

Kanawha properly acquired the trackage rights when the notice of exemption became effective.

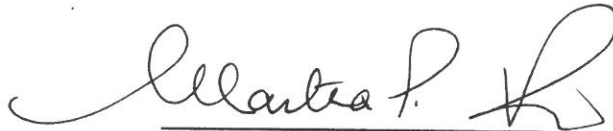
Mr. Craig Richey of Kanawha's corporate office provided information regarding the formation and start of operations for Kanawha. In a letter dated July 20, 2016, Mr. Richey stated that once Kanawha received approval from the STB, Kanawha intended to begin operations on August 1, 2016. However, Mr. Richey noted that Kanawha first compensated its employees on July 11, 2016. Mr. Richey estimated that Kanawha's annual freight volume would be approximately 20,000 carloads. He also stated that Kanawha interchanges with NS (BA#1525) and CSX Transportation Incorporated (CSXT) (BA#1524).

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.

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 Kanawha is a rail carrier operating in interstate commerce. Accordingly, the Board finds that Kanawha River Railroad, L.L.C. became an employer within the meaning of section 1(a)(1) of the Railroad Retirement Act and Section 1 of the Railroad Unemployment Insurance Act effective August 1, 2016, the date Kanawha first compensated its employees. Cf. Rev. Rul. 82-100, 1982-01 C.B. 155, wherein the IRS ruled that a company becomes an employer subject to RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations.



FOR THE BOARD

Martha P. Rico

Secretary to the Board