

EMPLOYER STATUS DETERMINATION

BCD 2023-01

Owego & Harford Railway, LLC (OHRY)

B.A. No. 2253

October 12, 2022

This is a determination of the Railroad Retirement Board concerning the continued status of Owego & Harford Railway, LLC (OHRY) (B.A. No. 2253) 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.*

In Board Coverage Decision No. 92-72, decided December 8, 1992, the Board determined that OHRY became a rail carrier operating in interstate commerce under the Acts, with an effective coverage date of May 1, 1992, the date on which it began operations. OHRY operated approximately 27.6 miles of line, between milepost 0.0 at Owego and milepost 27.6 at North Harford, New York.

In an email dated October 5, 2021, Nick Ruiz, Projects Consultant for Lackawanna Valley Management Corp., reported that OHRY ceased operations on December 4, 2020. Mr. Ruiz stated that OHRY currently has no employees, renders no services, does not interchange with other rail carriers, does not own any facilities or equipment, and does not currently have a relationship with the railroad industry. Mr. Ruiz stated that the assets of OHRY were purchased by R. J. Corman Railroad Company, LLC, and he submitted a copy of the Asset Purchase Agreement dated August 6, 2020, between OHRY and R.J. Corman Railroad Company, LLC. Mr. Ruiz stated that the owners of OHRY are Steven C. May, Steven C. May and Cheryl May, and Michelle Stephens.

Mr. Ruiz indicated that December 11, 2020 was the last day pay was received by OHRY employees that went to work for R.J. Corman Railroads, or employees that were not retained by R.J. Corman Railroads. However, Mr. Ruiz stated that two OHRY employees received pay after December 11, 2020. Mr. May received pay from OHRY until his last paycheck of March 26, 2021 and Justeen Foster received pay from OHRY until her last paycheck of December 31, 2020.

In Surface Transportation Board (STB) Finance Docket No. 36430, R.J. Corman Railroad Company/Owego & Harford Line, Inc.¹ filed a notice for a modified certificate of public convenience and necessity to operate the rail line between milepost 0.0 at Owego, NY and milepost 27.6 at North Harford, NY. *R. J. Corman Railroad Company/Owego & Harford Line, Inc.—Modified Certificate of Public Convenience and Necessity*, 2020 STB Fin Dkt. 36430. RJOH will provide rail service pursuant to an Operating Agreement

¹ The Board is considering the coverage status of R.J. Corman Railroad Company/Owego & Harford Line, Inc. in a separate decision.

between Owego & Harford and Tioga County Industrial Development Agency (TCIDA), the owner of the line, dated February 13, 2013, which was assigned to and assumed by RJOH as part of its purchase of the material assets of Owego & Harford. *Id.*

Section 202.11 of the Board's regulations states that "[t]he 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." 20 C.F.R. § 202.11. Evidence of such termination includes: stoppage of business or operations; the sale, transfer, or lease of property, equipment or machinery essential to the continuance of an employer function; and discharge of last employee. 20 C.F.R. § 202.12(b).

The evidence in this case supports a finding that OHRY no longer operates a rail line or has any employees engaged in railroad transportation. Specifically, the information obtained is that OHRY currently has no employees, renders no services, does not interchange with other rail carriers, does not own any facilities or equipment, and does not have a relationship with the railroad industry. Railroad Retirement Board records of annual reports of compensation reflect that the last service month reported for most employees of OHRY was December 2020. OHRY's 2021 service report is consistent with the information provided that Mr. May received his last paycheck in March 2021.

The Board finds that the evidence of record establishes that Owego & Harford Railway, LLC no longer possesses the characteristics of a covered employer. The Board therefore finds that OHRY ceased being a covered employer under the Acts, effective March 31, 2021, the last day of the last month in which OHRY had employees who performed creditable railroad services and were compensated for it by OHRY.

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board