

EMPLOYER STATUS DETERMINATION
BCD 2023-06
New England & Southern Railroad Co. (NESR)
B.A. No. 3114

October 17, 2022

This is a determination of the Railroad Retirement Board (RRB) concerning the continued status of New England & Southern Railroad Co. (NESR) (B.A. No. 3114) 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 Legal Opinion L-83-67, dated March 16, 1983, it was determined that NESR was a covered employer under the Acts, effective September 1, 1982, the date it began railroad operations. NESR provided rail service between Concord and Lincoln, NH.

Information regarding NESR was provided on September 22, 2021 by Chelsea Sweet, Outsourced Controller with Bowers & Company CPAs, PLLC. Ms. Sweet stated that NESR’s assets were sold to Vermont Rail System, NESR has no employees, and it ceased operations over the rail line. In an email dated September 23, 2021, Peter Young, General Counsel for Vermont Rail System, stated that some of NESR’s assets were purchased in 2020 by Trans Rail Holding Company (TRHC), and Merrimack & Grafton Railroad Corporation (MGRC) (B.A. No. 5108)¹ now operates the rail line formerly operated by NESR.

In Surface Transportation Board (STB) Finance Docket No. 36405, MGRC filed a verified notice of exemption to replace NESR as the operator of a 73-mile railroad line owned by the State of New Hampshire. *Merrimack & Grafton Railroad Corporation—Change of Operators Exemption—Line of New England Southern Railroad Co.*, 2020 STB Fin Dkt. 36405. The notice states that NESR provided common carrier rail operations over the line pursuant to an operating agreement between NESR and the New Hampshire Department of Transportation. MGRC is a wholly owned subsidiary of TRHC and was formed for the purpose of becoming the new operator of the line. On April 30, 2020, TRHC entered into an agreement to purchase some of NESR’s business assets and as part of that agreement NESR assigned all of its rights and obligations under the operating agreement to MGRC. *Id.*

Section 202.11 of the RRB’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).

¹ The Board determined in Board Coverage Decision 2021-18, dated March 5, 2021, that MGRC is a covered employer under the Acts as of July 1, 2020, the date it began operations.

The evidence in this case supports a finding that NESR no longer operates a rail line or has any employees engaged in railroad transportation. RRB records of annual reports of compensation reflect that the last service month reported for employees of NESR was December 2020.

The evidence of record establishes that NESR no longer possesses the characteristics of a covered employer. The Board, therefore, finds that NESR ceased being a covered employer under the Acts, effective December 31, 2020, the last day of the last month in which NESR had employees who performed creditable railroad services and were compensated for it by NESR.

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board