

EMPLOYER STATUS DETERMINATION

BCD 2023-04

Luzerne and Susquehanna Railway Co. (L&SR)

B.A. No. 2262

October 12, 2022

This is a determination of the Railroad Retirement Board concerning the continued status of Luzerne and Susquehanna Railway Co. (L&SR) (B.A. No. 2262) 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. 95-44, decided March 31, 1995, the Board determined that L&SR became a rail carrier operating in interstate commerce under the Acts, with an effective coverage date of August 26, 1994, the date on which it began operations.

In an email dated October 5, 2021, Nick Ruiz, Projects Consultant for Lackawanna Valley Management Corp., reported that L&SR ceased operations on December 4, 2020. Mr. Ruiz stated that L&SR currently has no employees, renders no services, does not interchange with other rail carriers, does not own any facilities, and does not currently have a relationship with non-railroad operations. Mr. Ruiz stated that L&SR still owns three locomotives and leases those locomotives to a short line railroad operating in Mississippi. Mr. Ruiz stated that the assets of L&SR were purchased by R. J. Corman Railroad Company, LLC, and he submitted a copy of the Asset Purchase Agreement dated August 6, 2020, between L&SR and R.J. Corman Railroad Company, LLC et al. Mr. Ruiz stated that the owner of L&SR is Steven C. May.

Mr. Ruiz indicated that December 11, 2020 was the last day pay was received by L&SR 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 one L&SR employee, James Raffa, received pay from L&SR after December 11, 2020, until his last paycheck on December 31, 2020.

In Surface Transportation Board (STB) Finance Docket No. 36429, R.J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC¹ filed a verified notice of exemption to change operators and assume the lease and operation of approximately 41.19 miles of rail line in Luzerne and Lackawanna Counties, PA. *R. J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC - Change in Operators, Lease and Operation Exemption – Luzerne and Susquehanna Railway Co. and Luzerne County Rail Corporation*, 2020 STB Fin. Dkt. 36429. At that time, the line was operated by L&SR. *Id.*

¹ The Board is considering the coverage status of R.J. Corman Railroad Company/Luzerne & Susquehanna Line, LLC in a separate coverage decision.

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 L&SR no longer operates a rail line or has any employees engaged in railroad transportation. Specifically, the information obtained is that L&SR currently has no employees, renders no services, does not interchange with other rail carriers, does not own any facilities, and leases its three locomotives to another railroad. Railroad Retirement Board records indicate that L&SR last filed an annual report of compensation for 2020. The last service month reported for employees of L&SR was December 2020.

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

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board