

EMPLOYER STATUS DETERMINATION

B.C.D. 2022-07

Gateway Industrial Railroad, LLC (GIRR)

B.A. No. 4420

March 9, 2022

This is a decision of the Railroad Retirement Board concerning Gateway Industrial Railroad, LLC's (GIRR) 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.*

In a letter dated August 4, 2021, David C. Dillon of Dillon & Nash, Ltd., Attorneys at Law, provided information regarding the formation and start of operations for GIRR. Mr. Dillon stated that Avatar Corporation owns 100% of the membership interest in GIRR. Douglas J. Ehrenworth is the Manager of GIRR. GIRR performs switching and transload operations for Avatar Corporation at its University Park, Illinois facility. There is one terminal point, but no mileposts associated with the track, which is used to interchange with Canadian National Railway (CN) (B.A. No. 1103). The track length is 2,195 feet, or 0.42 mile. GIRR does 100% of its business with, but receives 0% of its revenue from, CN. Mr. Dillon stated that GIRR began operations on January 21, 2019. GIRR's employees were first compensated on January 4, 2019. Through March 18, 2020, GIRR had four employees, and as of August 2021, GIRR had 9 employees.

In Surface Transportation Board (STB) Finance Docket No. 36260, decided December 20, 2018, GIRR filed a verified notice of exemption to acquire and operate by agreement with Avatar Corporation approximately 2,400 feet (0.46 mil) of existing railroad right-of-way, and trackage and transloading facilities in University Park, Illinois.¹ *Gateway Industrial Railroad, LLC – Acquisition and Operation Exemption – Avatar Corporation*, 2018 STB Fin. Dkt. 36260. The decision stated that Avatar Corporation ships outbound shipments via truck and rail, and it was anticipated that GIRR would service nearby companies. *Id.* GIRR certified that its projected annual revenues as a result of the transaction would not exceed those that would qualify it as a Class III rail carrier, nor exceed five million dollars. *Id.*

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.

Here, the record establishes that GIRR is a rail carrier operating in interstate commerce because it interchanges with CN, a Class I railroad. Accordingly, it is determined that Gateway Industrial Railroad, LLC became an employer within the meaning of the Acts effective January 4, 2019, the date on which it first compensated its employees. *See also* Rev. Rul. 82-100, 1982-1 C.B.

¹ In its decision, the STB refers to GIRR as Gateway Industrial Railroad, LLC and Gateway Industrial Railway, LLC. Consistent with GIRR's Articles of Amendment (IL Form LLC-5.25), "Gateway Industrial Railroad" is used herein.

155 (Internal Revenue Service ruled that RRTA employer status begins on the date the company first hires employees to perform functions directly related to its carrier operations).

FOR THE BOARD
Stephanie Hillyard
Secretary to the Board