B.C.D. 03-56

JUN 16 2003

EMPLOYER STATUS DETERMINATION
American Railroads Corporation

This is the decision of the Railroad Retirement Board with regard to the coverage of American Railroads Corporation. (ARC) under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

According to information supplied by Edwin Josephson, outside corporate counsel for ARC, and by Edward McClure, Chairman, President, and Chief Executive Officer of ARC, ARC was incorporated in 1990. ARC is a privately held company owned by Mr. Richard McClure, Mr. Robert J. Geib, and Mr. Michael H. Minton. ARC is primarily engaged in shortline consulting and acquisitions. The owners of ARC also own the Gulf, Colorado & San Saba Railway Corporation (GCSR), an employer under the Acts (BA No. 3891) since May 11, 1993. Sweetwater Central Switching Company[1], is a wholly owned subsidiary of the Gulf, Colorado & San Saba Railway Company. In addition, ARC owns the Missouri & Valley Park Railroad Corporation[2]. ARC reportedly has five employees. Its employees were first compensated in November 1990.

ARC provides the following services for its affiliated companies:

a. search for new opportunities for the acquisition of switching contracts or shortline railroads;

b. sales assistance and procurement of new customers;

c. tax accounting, including procurement of data for its outside public accountants;

d. final billing to customers;

e. maintenance of accounting records;

f. payroll services, including preparation of periodic payroll for employees of affiliated companies and payroll recordkeeping;

---

[1] The coverage status of the Sweetwater Central Switching Company is currently under review.
[2] The coverage status of the Missouri & Valley Park Railroad Corporation is currently under review.

American Railroads Corporation

g. procurement and negotiation of insurance contracts with carriers for general liability and health insurance;

h. administration of insurance claims on behalf of its affiliates with insurance adjusters and carriers;

i. procurement of legal services, permits and licenses.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (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;
>
> (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad * * *.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RRTA), 26 U.S.C. 3231.

ARC is clearly not a carrier by rail. Whether ARC is covered as a rail carrier affiliate depends in the first instance on whether it is under common control with a rail carrier. Section 202.5 of the Board's regulations (20 CFR 202.5) defines common control as follows:

> A company or person is under common control with a carrier, whenever the control (as that term is used in § 202.4) of such company or person is in

American Railroads Corporation

> the same person, persons, or company as that by which the carrier is controlled.

Messer. McClure, Minton and Geib own and control ARC and a carrier, GCSR. This clearly creates common control in these individuals over both ARC and a carrier. Since ARC is under common control with a carrier, it would be an employer subject to the Acts if it performs a service in connection with railroad transportation. The services the ARC performs for its affiliates are clearly services in connection with railroad transportation. Cf. Adams v. Railroad Retirement Board, 214 F.2d 534 (9th Cir. 1954). During 2002, 40% of ARC's consulting revenue was obtained from GCSR.

Based on the above facts, it is the determination of the Board that ARC has been an employer under the Acts since May 11, 1993, the date as of which GCSR became a rail carrier employer under the Acts. Service and compensation of ARC employees may be credited to the extent permitted by section 9 of the Railroad Retirement Act and section 211.16 of the Board's regulations (20 CFR 211.16).

Original signed by:

V. M. Speakman, Jr.

Jerome F. Kever