

**B.C.D. 15-02**

**February 13, 2015**

**EMPLOYER STATUS DETERMINATION**

**American Railroad Group Transportation Services, LLC (ARG Trans)**

**d/b/a ARG Trans**

**f/k/a Arizona Railroad Group**

This is a determination of the Railroad Retirement Board concerning the continued status of American Railroad Group Transportation Services, LLC d/b/a ARG Trans (ARG Trans) as an employer 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). The status of ARG Trans under the Acts has previously been considered. In B.C.D. 04-5 issued February 11, 2005, the Board found that Arizona Railroad Group, LLC<sup>1</sup> was not a covered entity under the Acts. The Board found that Arizona Railroad Group, LLC was a holding company for two covered subsidiaries and did not provide services to the railroad industry.

Subsequent to B.C.D. 04-5, additional information has been submitted to the Board. On July 1, 2009, Arizona Railroad Group, LLC changed its name to American Railroad Group Transportation Services, LLC (ARG Trans) for the purpose of attracting additional clients outside of the Arizona geographical area. ARG Trans is a privately held corporation wholly owned by Scott and Maura Parkinson. Mr. Scott Parkinson, the President and CEO of ARG Trans provided the information regarding the formation, name change, and continuing operations for ARG Trans. Mr. Parkinson reports that two new employees were hired to perform management services for subsidiary covered railroad entities and the first date of compensation of employees working for ARG Trans was February 1, 2013. As found previously, ARG Trans is the parent company of Cochise Trails, a real estate developer and holding company and the parent company for Coos Bay Rail Link (CBR - BA#5745) and the San Pedro Operating Company d/b/a San Pedro & Southwestern Railroad (SPSR – BA#4786). The two railroad subsidiaries have been found to be railroad employers covered under the Acts<sup>2</sup>.

In Surface Transportation Board (STB) Finance Docket No. 35550, decided September 9, 2011, ARG Trans filed a verified notice of exemption to operate approximately 133 route miles of railroad line in Oregon owned by the Oregon International Port of Coos Bay. The rail line runs from an interchange with the

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<sup>1</sup> Arizona Railroad Group was the previous name of ARG Trans as discussed in the following paragraph.

<sup>2</sup> CBR found covered in B.C.D. 11-92, issued October 17, 2011. SPSR found covered in B.C.D. 04-3, issued February 2, 2004.

Union Pacific Railroad at Eugene, Oregon to the end of the track at Coquille, Oregon. ARG Trans, through CBR, will interchange with Union Pacific Railroad. CBR is wholly owned by ARG Trans.

ARG Trans other subsidiary railroad, SPSR, operates 10 miles of track from an interchange with the Union Pacific Railroad at Benson, Arizona to an interchange with the Union Pacific Railroad at Willcox, Arizona. This line has been in operation since the creation of ARG Trans as previously addressed. SPSR interchanges with the Union Pacific Railroad.

According to documents provided, ARG Trans was formed as a holding company for the SPSR and Cochise Trails real estate as described. Mr. Parkinson reports that acquisition of CBR ultimately required changes to the status of ARG Trans. ARG Trans reports that it has ceased to be merely a holding company and has hired two employees to directly administer and manage the subsidiary railroads. The two employees were first compensated beginning on February 1, 2013. ARG Trans and its subsidiaries derive 100% of the total business from interchange with the Union Pacific Railroad and derive 90% of their revenue from Union Pacific Railroad. ARG Trans and its subsidiaries will handle freight with revenues that will not result in ARG Trans becoming a Class I or Class II rail carrier.

Section 1(a)(1) of the Railroad Retirement Act (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 \*\*\*.

Section 1(a) and 1(b) of the Railroad Unemployment Insurance Act [RUIA (45 U.S.C. § 351)] contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Board recognizes that ARG Trans is seeking status as a railroad entity covered under the Acts; however, the Board finds that established legal precedent and past Board Coverage Decisions prevent such a finding for ARG Trans under the “common control” doctrine and the corporate organization present in the relationship of the companies described by Mr. Parkinson. To qualify as an employer under the Railroad Retirement Tax Act [RRTA (26 USC §§ 3201-3233)] the two-prong test to find a railroad entity covered under the “common control” doctrine is that the railroad entity must; (1) be either directly or indirectly owned or controlled by one or more such carriers or under common control with the carrier and (2) the railroad entity must perform service (other than trucking or casual service) in connection with the transportation of passengers or property by railroad. (see Union Pacific Corporation v. United States 5 F. 3d 523, 1993.) The Court in Union Pacific further clarified “common control” by stating:

The term “under common control” does not usually apply to two companies in a parent-subsidary relationship. These words—“under common control” – convey a meaning of mutual subordination to a controlling principal. A company which controls another is not “under common control” with its subsidiary. Rather two companies most naturally fit within the term “under common control” when occupying parallel position as subsidiaries controlled by a common parent. (Union Pacific at 525 and 526.)

The Board applied this standard to determine “common control” in numerous coverage decisions since the holding in Union Pacific. Additionally, the Union Pacific definition of “common control” was found to hold true regardless of whether a railroad entity was a publicly held or privately held corporation in the recent United States Court of Appeals for the District of Columbia decision of Indiana Boxcar Corporation v. Railroad Retirement Board (712 F.3d 590, 2013)<sup>3</sup>.

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<sup>3</sup> Indiana Boxcar applied the Union Pacific standard of “common control” to Indiana Boxcar Corporation and found it to not be under common control with its subsidiaries, even though Indiana Boxcar was a privately held corporation where the owner was also owner and president of each of Indiana Boxcar Corporation’s subsidiary railroads. The Court ruled that since the Board found other railroad entities with closely held, publicly traded corporations not to be under common control, the fact that Indiana Boxcar was a privately held corporation was not a material distinction and a privately held corporation should be subject to the same common control standard. The fact that Indiana Boxcar Corporation had employees performing management duties was not addressed since the Union Pacific common control standard was not met.

In the present case, ARG Trans argues that since it has directly hired two employees to manage and have direct supervision over railroad operations at the subsidiary railroads, that ARG Trans should now be found to be a railroad employer covered under the Acts. The Board finds that ARG Trans circumstances to be essentially the same as those found in the Indiana Boxcar Corporation case; wherein the management functions of certain employees are immaterial to the common control analysis. Just like ARG Trans, Indiana Boxcar Corporation was shown to be a privately held parent corporation with subsidiary railroad entities covered under the Acts. The parent company and the subsidiary railroad employers were all held and owned by the same individual. Indiana Boxcar Corporation also performed direct management services for its subsidiaries. The Board originally found Indiana Boxcar Corporation to be a covered railroad employer because it was under common control with its subsidiary entities and that the management services it provided to its subsidiaries was considered service in connection with railroad transportation. As indicated previously, the holding of the Court directed that Indiana Boxcar was not under common control with its affiliates, and the issue of management or supervision services was not material.

ARG Trans has the same relationship with its subsidiaries as Indiana Boxcar Corporation has with its subsidiaries because ARG Trans is the corporate parent of two subsidiary railroads covered under the Acts and all entities are owned by the same limited group of people<sup>4</sup>. As established by the Court's holding in Indiana Boxcar, a corporate parent cannot be found to be under common control with its subsidiaries, regardless of any report of management services being provided by employees of the parent company because the common control analysis does not satisfy the first prong of common control under the Union Pacific standard. Accordingly, the Board must find that ARG Trans is not under common control with its affiliates and the Board will not proceed to address the management services since the first prong of the common control test is not met.

The evidence of record establishes that even though ARG Trans has hired new employees under its own name to manage its subsidiary railroads, ARG Trans cannot be held to be under common control with its subsidiary railroads as discussed. Accordingly, it is determined that American Railway Group Transportation Services, LLC, is not an employer within the meaning of section

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<sup>4</sup> Information presented to the Board indicates that ARG Trans, SPSR, CBR, and Cochise Trails are all owned and/or managed by Scott Parkinson, Maura Parkinson, or David Parkinson.

1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance.

Additionally, the Board finds that it has not previously addressed the name change for ARG Trans referenced at the beginning of this decision. In the initial coverage determination (B.C.D. 04-5, February 11, 2004) ARG Trans was originally named Arizona Railroad Group, LLC. Mr. Parkinson reported that On July 1, 2009, Arizona Railroad Group, LLC changed its name to American Railroad Group Transportation Services, LLC (ARG Trans) for the purpose of attracting additional clients outside of the Arizona geographical area. Mr. Parkinson did not report any additional changes to ARG Trans not already addressed in this decision. The Board finds that evidence of record indicates that there are no substantial changes to the status of American Railroad Group Transportation Service, LLC d/b/a ARG Trans f/k/a Arizona Railroad Group. Records of the Board will be changed to reflect the new name. The Board finds that no changes need to be made to the records of the subsidiary railroads (SPSR and CBR) covered under the Acts based upon the name change to the parent company.

Original signed by:

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