B.C.D. 04-5

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EMPLOYER STATUS DETERMINATION
Arizona Railroad Group, LLC

This is the determination of the Railroad Retirement Board concerning the status of Arizona Railroad Group, LLC (ARG), as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding ARG was provided by David L. Parkinson, one of the owners of ARG. According to Mr. Parkinson, ARG began doing business September 26, 2003, as a holding company for San Pedro Railroad Operating Company, LLC, and Cochise Trails, LLC. San Pedro provides switching services and interchanges with the Union Pacific Railroad. Its status under the Acts is currently under consideration by the Board. Cochise Trails is a real estate developer and holding company. Mr. Parkinson reported that ARG has no employees and does no business with rail carriers.

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 * * *.

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

The evidence of record establishes that ARG is not a carrier, and does not provide services to the railroad industry. Accordingly, it is determined that AGR is not an employer within the meaning of section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act.

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