

SEP 28 2006

**EMPLOYER STATUS DETERMINATION
Ironhorse Resources, Inc. (Ironhorse)**

This is a determination of the Railroad Retirement Board concerning the status of Ironhorse Resources, Inc. (Ironhorse) 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).

In Surface Transportation Board Finance Docket No. 34356, decided June 12, 2003, Gregory B. Cundiff, Connie Cundiff, CGX, Inc. (CGX), and Ironhorse, noncarriers, jointly filed a verified notice of exemption to continue in control of Mississippi Tennessee Holdings, LLC (MTH) (B.A. No. 9017) and Mississippi Tennessee Railroad, LLC (MTR) (B.A. No. 4578), upon MTH and MTR becoming rail carriers.¹ That STB decision stated that MTH and MTR are currently owned by CGX, a non-carrier holding company, that owns three carriers: Crystal City Railroad, Inc., Lone Star Railroad, Inc., and Rio Valley Railroad, Inc. (BA No. 2867). According to the STB decision, CGX also owns Ironhorse, a non-carrier holding company, that owns four carriers: Railroad Switching Services of Missouri, Texas Railroad Switching, Inc. (BA No. 4861), Rio Valley Switching Company (BA No. 2869), and Southern Switching Company (BA No. 2868). CGX is owned by Mr. and Mrs. Gregory B. Cundiff, non-carrier individuals, according to the STB decision.

Information regarding Ironhorse was furnished by Mr. Barry S. McClure, Controller and Assistant Secretary for Ironhorse. Information provided by Mr. McClure regarding Ironhorse shows that the Chief Executive Officer is Mr. Greg Cundiff. Mr. McClure stated that Ironhorse is the parent company of Railroad Switching Service of Missouri, Inc., Border Transload & Transfer, Inc. (BTTI) (formerly known as Texas Railroad Switching, Inc.), Rio Valley Switching Company, Southern Switching Company and Mississippi Tennessee Railroad, LLC. Ironhorse does not own any

¹ B.C.D. 04-16, issued March 22, 2004, held that MTH and MTR became covered employers effective May 21, 2003.

track, conduct any railroad operations, or interchange with another railroad, according to Mr. McClure. Mr. McClure stated that Ironhorse “provides administrative and managerial services to all of its subsidiaries” and that “such activities include payroll, payables, accounting, receivables and the like.” Mr. McClure stated that Ironhorse currently has six employees who were first compensated on June 1, 1990.

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).

Ironhorse is not a carrier by rail within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act. Accordingly, we turn to section 1(a)(1)(ii) in order to determine whether Ironhorse is an employer within the meaning of that section. Under section 1(a)(1)(ii), a company is a covered employer if it meets both of two criteria: if it is owned by or under common control with a rail carrier employer and if it provides “service in connection with”

railroad transportation. If it fails to meet either condition, it is not a covered employer within section 1(a)(1)(ii).

Ironhorse is owned by CGX, Inc., a parent of a series of operating companies and asset holding companies. In particular, CGX owns Crystal City Railroad, Inc., Lone Star Railroad, Inc., and Rio Valley Railroad, Inc. (B.A. No. 2867), Mississippi Tennessee Holdings, LLC (B.A. No. 9017), and Mississippi Tennessee Railroad, LLC (B.A. No. 4578). CGX is owned by Gregory and Connie Cundiff. Mr. Cundiff is also the Chief Executive Officer of Ironhorse, BTTI, and Mississippi Tennessee Railroad, LLC. Ironhorse itself owns Railroad Switching Service of Missouri, which operates St. Louis Railroad (B.A. 4397); Southern Switching Company, which operates the Lone Star Railroad (B.A. 2868); Rio Valley Switching Company, which operates the Rio Valley Railroad (B.A. 2869); and BTTI, which operates Las Cruces New Mexico Transload.

It is important to point out that most, if not all, of the operating companies owned by Ironhorse have the same corporate address as it is listed on the Ironhorse Resources, Inc. letterhead, stated as 102 Willow Drive, P.O. Box 99, O'Fallon, Illinois 62269. In addition, rail carrier employers owned by CGX and by Ironhorse have the same business address. Specifically, those companies having the same corporate address as Ironhorse are Rio Valley Switching Company, Rio Valley Railroad, Inc., Mississippi Tennessee Holdings, LLC, Mississippi Tennessee Railroad LLC, and Southern Switching Company.

Based on the evidence of record, the Board finds that Ironhorse is under common control with the railroads owned by CGX, Inc. Thus, if Ironhorse performs a "service in connection with" railroad transportation, it is a covered employer under the Acts.

Section 202.7 of the Board's regulations (20 CFR 202.7) defines service in connection with railroad transportation as follows:

The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

The evidence of record shows that Ironhorse is a provider of administrative and managerial services to its railroad subsidiaries. As stated previously, such services include payroll, payables, accounting, receivables, etc. Ironhorse was incorporated and began operations on June 1, 1990 and has six employees who were first compensated on June 1, 1990. Ironhorse has no history of being independent of the railroads owned by CGX or itself. The activities of Ironhorse are to administer and manage payroll and accounting functions for all of its subsidiaries. The Board finds from the evidence in the file that Ironhorse provides 100 percent of its accounting and managerial services for its rail carrier affiliates.

In Adams v. R.R.B., 214 F.2d 534 (9th Cir. 1954), the Court of Appeals for the Ninth Circuit held that a non-carrier subsidiary which was in the electric utility business was found to be a covered employer on the grounds that it was also engaged in accounting, purchasing, and stenographic services; caring for and replacing poles in an overhead trolley system; and bridge building and general repair services for its carrier affiliate. Similarly, Ironhorse supplies a steady source of accounting and managerial

services to its rail carrier affiliates. Accordingly, the evidence of records shows that Ironhorse is an accounting and managerial company which does 100 percent of its business with its rail carrier affiliates. Based on the foregoing criteria, it is the conclusion of the Board that Ironhorse is under common control with and performing a service in connection with railroad transportation for its rail carrier affiliates.

The information summarized above establishes that Ironhorse is an affiliate employer. Accordingly, it is determined that Ironhorse Resources, Inc. (Ironhorse) became an employer within the meaning of section 1(a)(1)(ii) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)(ii)) and the corresponding provision of the Railroad Unemployment Insurance Act effective June 1, 1990, the date on which operations were commenced. Service to Ironhorse may be credited in accordance with section 9 of the Railroad Retirement Act (45 U.S.C. §231h) and section 211.16 of the Board's regulations (20 CFR 211.16).

Original signed by:

Michael S. Schwartz

V. M. Speakman, Jr.

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