

EMPLOYER STATUS DETERMINATION

BCD No. 2022-10

Buckeye Terminals, LLC (BT)

March 21, 2022

This is a determination of the Railroad Retirement Board concerning the status of Buckeye Terminals, LLC (BT) as an employer under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). 45 U.S.C. § 231 *et seq.*; 45 U.S.C. § 351 *et seq.* The status of BT under the RRA and RUIA has not previously been considered.

Information on BT was provided by the attorney representative of BT, Charles A. Spitulnik. According to Mr. Spitulnik, BT is an indirect wholly owned subsidiary of Buckeye Partners, L.P., a non-covered entity that does not control, directly or indirectly, any entity with common carrier authority from the Surface Transportation Board (STB). According to documents provided by Mr. Spitulnik, BT's predecessors in interest were Buckeye Hammond Railroad, LLC (BHRR) and Buckeye East Chicago Railroad, LLC (BECR), previously covered employers under the RRA and RUIA. In a Board decision dated June 28, 2018 (B.C.D. 18-12 and 18-12.1), the Board found that BHRR and BECR ceased being covered employers effective March 26, 2018. Such decision was based on the fact that BHRR and BECR transferred all of their assets to BT, the STB granted them exemptions allowing them to abandon their common carrier obligations, and they both executed certificates of cancellation to dissolve their corporate entities.

According to Mr. Spitulnik, BT did not acquire any common carrier authority through its acquisition of BHRR and BECR's assets. BT is a shipper that contracts with an unaffiliated carrier, Landisville Railroad, LLC (B.A. No. 4413) for switching services on a private track within its transload facilities, and another unaffiliated carrier, Indiana Harbor Belt Railroad (B.A. No. 4217) enters BT's private track to pick up and deliver goods in common carrier service.

Section 1(a)(1) of the RRA defines a covered employer as:

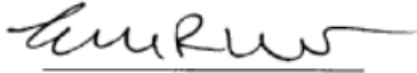
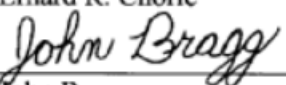
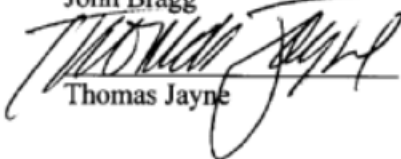
- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (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.

45 U.S.C. § 231(a)(1)(i), (ii). Sections 1(a) and 1(b) of the RUIA contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act. 45 U.S.C. § 351(a), (b); 26 U.S.C. § 3231.

BT is clearly not a carrier by rail. We must next determine whether BT is a covered employer under section 1(a)(1)(ii) of the RRA. Under section 1(a)(1)(ii), a company is a covered employer if it provides service in connection with rail transportation and if it is owned by or under

common control with a rail carrier employer. If the company fails to meet these criteria, it is not a covered employer within section 1(a)(1)(ii) of the RRA.

The evidence of record establishes that BT is not owned, controlled or under common control with any employers. Accordingly, the Board finds that BT is not a covered employer under the RRA and RUIA.


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