BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
PARSEC INC	**1631343**
Employer	**ORDER DISMISSING CITATION FOR LACK OF JURISDICTION**

ORDER RE MOTION TO DISMISS CASE BASED UPON LACK OF JURISDICTION

Background

On the evening of August 24, 2022, George Diaz (Diaz), an employee of Parsec, Inc. (Employer), was working at Employer's railroad terminal called the "Hobart Yard" in Commerce, California (the yard). Diaz was attempting to unlock an interbox connector (IBC) that was connecting a double-stacked rail container car. Diaz was attempting to disconnect the IBC when he tripped on an IBC storage box on the railcar catwalk and fell approximately five feet off the catwalk to the ground.

On February 21, 2023, the Division of Occupational Safety and Health (the Division) issued one Serious Accident-Related citation to Employer, asserting a violation of California Code of Regulations, title 8, section 3210, subdivision (c)[1] , which provides:

> (c) Where the guardrail requirements of subsections (a) and (b) are impracticable due to machinery requirements or work processes, an alternate means of protecting employees from falling, such as personal fall protection systems, shall be used.

Employer appealed the citation on all grounds allowed on the appeal form, and raised the defense of Exception 9 provided in section 3210, subdivision (b):

> "Work from the decks, permanent/stationary platforms, runways, or walkways of mobile vehicles/equipment *shall be excluded from the requirements of subsection (b) where it can be shown that guardrails or handholds are impracticable by the design or work processes*."

(8 Cal. Code Regs. §3210, subd. (b), Exception 9 [emphasis added].)

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.

Employer argued that since this is a mobile rail car, it should be excluded from this requirement of fall protection. The appeal was designated as Expedited. Abatement was not achieved, so the matter went to hearing.

Procedural History

The hearing commenced on October 19, 2023, and jurisdictional documents were admitted into evidence. Day two of the hearing took place on November 15, 2023. The hearing was then continued several times due to counsel illness and calendar conflicts.

On December 2, 2024, Employer filed an Emergency Motion to Bifurcate Legal and Jurisdictional Issues and Request for Continuance of Video Hearing. The future hearing dates were December 17 and 19, 2024. Employer argued that bifurcation of the purely legal issues would be appropriate as a determination of the Division's jurisdiction and authority. Employer further argued that a ruling on this motion could lead to the dismissal of the citation against Employer without the need for a hearing on the merits of the citation. What Employer really wanted was a suspension of the hearing pending resolution of the jurisdictional issues. Employer was challenging whether the Division had jurisdiction to issue a citation at all in this case.

Stipulations were placed on the record on December 17, 2024. Thereafter, the hearings noticed for December 17 and 19, 2024, were taken off calendar.

The stipulations were as follows:

1. George Diaz (Diaz), the injured employee, was employed by employer, Parsec, Inc.
2. The railcar used by George Diaz is a mobile piece of equipment.
3. The injury suffered by Mr. Diaz was serious as defined under Labor Code section 6302, subdivision (h), and under section 330, subdivision (h).
4. The use of guardrails was not practicable on this mobile railcar due to work processes.

The parties filed briefs for and against the motion. Oral argument took place on January 10, 2025, and the motion to hear the bifurcation motion fully was granted.

On January 31, 2025, Employer's motion was argued and granted.

The parties were then ordered to prepare briefs and be prepared to argue whether Labor Code section 6800, subdivision (a), controls or does 49 USCS section 20106, subdivision (a)(2), preempt the Division from having jurisdiction in this matter. Briefs were thus prepared and simultaneously submitted on June 30, 2025.

The matter was argued and submitted for ruling on the motion with a submission date of October 30, 2026.

Analysis

The parties argued and submitted closing briefs on the core question: Does Labor Code section 6800, subdivision (a), control or does 49 USCS section 20106 subdivision (a)(2) preempt the Division from having jurisdiction in this matter?

Labor Code section 6800 sets forth the very specific circumstances under which the Division may regulate the railroad industry:

> (a) *The safety and health of railroad employees employed in offices and in shops devoted to the construction, maintenance or repair of railroad equipment, and all other railroad employees with respect to occupational health*, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water.
>
> [...]

(Lab. Code § 6800, subd. (a). Emphasis added.)

The California courts have held that Labor Code section 6800 is controlling over the general provisions of the California Occupational Safety and Health Act. "[T]he specific provisions of [Labor Code] section 6800 must be held to control over the general provisions of the California Occupational Safety and Health Act of 1973 (including Lab. Code, § 6307) ..." (See, *San Francisco Bay Area Rapid Transit Dist. v. Division of Occupational Saf. & Health* (1980) 111 Cal. App. 3d 362, 366.)

The accident that gave rise to the citation did not involve employees in an office or shop devoted to the construction, maintenance, or repair of railroad equipment. It involved other non-shop employees. However, the Division's regulatory authority over those employees relates only to "occupational health," not safety. (Lab. Code § 6800, subd. (a).)

This limited regulatory authority over certain railroad employees in offices and shops is apparent in the Division's few regulations related to railroad employees, located at California Code of Regulations, title 8, section 3332 through 3335. These regulations relate to work being performed while rail cars are in a yard or while they are in the yard for maintenance. These regulations were not cited in the case before us and thus do not apply. The unlocking of an IBC on a railcar in the railyard and falling from a railcar catwalk was the issue involved in the present case.

I. *Federal Regulation of the Railroad Industry*

It is undisputed that Diaz was working at Employer's railroad terminal yard at the time of his fall. Diaz was attempting to unlock an IBC that was connecting a double-stacked rail container car. Diaz was attempting to disconnect the IBC when he tripped on an IBC storage box on the railcar catwalk and fell approximately five feet off the catwalk to the ground.

It is Employer's contention that the Division lacks jurisdiction under Labor Code Section 6800 concerning the safety and health of railroad employees involved in the operation and management of intermodal rail yards. The more specific jurisdictional provisions under Labor Code section 6800 grant control over other general legislation, but the plain text of that section clearly limits the Division's authority to certain categories of railroad employees, such as those in offices and shops dedicated to the construction, maintenance, or repair of railroad equipment. This limited jurisdiction would not extend to employees performing railroad operations atop railroad cars on the tracks in the railroad yard.

Employer also argues that railway yard safety is regulated at the federal level by the Federal Railway Administration (FRA), through the implementation of the Federal Railway Safety Act (FRSA) (49 U.S.C. § 20101, et seq.). Indeed, the safety of railroad operations has been fully vested by Congress to the FRA. See 49 U.S.C § 20101 (purpose of the Act is to "*promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.*" Emphasis added.) Through regulatory action and policy statements, the FRA has substantially subsumed the exact same subject matter that the Division seeks to regulate through the issuance of this citation against Parsec related to work performed on top of railcars.

Employer's position is that federal preemption clearly limits the application of state and other federal regulations, such as those from the Division, in the context of railroad operations. Indeed, the safety of railroad operations has been fully vested by Congress to the FRA. (See 49 U.S.C § 20101 (purpose of the Act is to "promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.") Through regulatory action and policy statements, the FRA has substantially subsumed the exact same subject matter that the Division seeks to regulate through the issuance of this citation against Parsec related to work performed on top of railcars. (43 Fed. Reg. 10583, 10585.) (FRA clearly indicated that it was going to "concentrate our limited resources in addressing hazardous working conditions in those traditional areas of railroad operations in which we have special competence.") Safety regulations promulgated under FRSA expressly preempt state law such as the Division's regulations that would seek to regulate railroad operations.

Employer further contends that the FRA has the primary authority to enforce these railroad safety regulations which fall outside of Federal or State OSHA's authority. *(Div. of Indus. Safety v. Mun. Court*, (1976) 61 Cal. App. 3d 696, 700 [inspection warrant sought by Division to conduct

noise survey was properly quashed where it would have covered the railroad yard and operations that was beyond the Division's limited jurisdiction]; *San Francisco Bay Area Rapid Transit Dist. v. Division of Occupational Saf. & Health*, *supra*,111 Cal. App. 3d at 366 [Division lacked jurisdiction to issue special order requiring employer to modify its fire hose outlets].) This authority is not theoretical as the FRA employs hundreds of safety inspectors that enforce the federal rail safety laws through routine inspections of the operations, equipment, track and signal systems at the nation's railroads. (See 49 CFR Appendix A to Part 209.)

Employer makes the point that the safety of railroad operations has been fully vested by Congress to the FRA. See 49 U.S.C § 20101 (purpose of the Act is to "promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." Through regulatory action and policy statements, the FRA has substantially subsumed the exact same subject matter that the Division seeks to regulate through the issuance of this citation against Parsec related to work performed on top of railcars. (See Ex. FF: 43 Fed.Reg. 10583, 10585. [FRA clearly indicated that it was going to "concentrate our limited resources in addressing hazardous working conditions in those traditional areas of railroad operations in which we have special competence."]. Safety regulations promulgated under the FRSA expressly preempt state law such as the Division's regulations that would seek to regulate railroad operations.

In 1978, the FRA issued a formal notification and Policy Statement that it was withdrawing its notice of proposed rulemaking with respect to railroad occupational safety and health standards, based on a determination that it should not attempt to regulate in an area already covered by the Federal Occupational Safety and Health Standards Administration (Fed/OSHA).43 Fed. Reg. 10583 (March 14, 1978).)

In these traditional areas of railroad safety, FRA has developed a special expertise which makes this agency uniquely qualified to play the primary role in the Federal Government's efforts to assure safe employment and places of employment for railroad employees engaged in activities related to railroad operations. As a result, FRA must exercise a continuing role in the area of railroad occupational safety and health.

The Division argues that the Act was "enacted for the purpose of assuring safe and healthful working conditions for all California working men and women …." (Lab. Code, § 6300.) It grants the Division "the power, jurisdiction, and supervision over every employment and place of employment in this state," defining place of employment as "any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division." (Lab.Code, §§ 6307, 6303, subd. (a)).) Section 6800 grants the Division jurisdiction over "(a) The safety and health of railroad employees employed in offices and in shops devoted to the construction, maintenance or repair of railroad equipment, and all other railroad employees

with respect to occupational health, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water. … (c) The safety of employees of all other public utilities as defined in the Public Utilities Act." (Lab. Code, § 6800.)

The Division's attempt to enforce regulations over railroad operations which fall under the FRA's unique knowledge and expertise is inappropriate. Federal preemption clearly limits the application of state and other federal regulations, such as those from the Division, in the context of railroad operations. This principle is well-established, where courts have consistently held that the FRA's authority preempts the Division's regulations in specific contexts. [2]

The FRA Policy Statement makes it clear that the Department of Transportation has chosen to confine its regulatory activity to those areas of the railway industry that are directly related to railroad operations and to forego the exercise of regulatory power over hazards similar to those found in the industry at large. (*Southern Pacific Transportation*, *supra*, Cal/OSHA App. 94-3142.)

Thus, the FRA preempts the Division's jurisdiction in employee safety and health in specific areas involving railroad operations, but not necessarily all areas of employee safety and health.

II. *Division's Limited Regulatory Jurisdiction Over Railroad Employees*

The Division argues that construing Labor Code section 6800 as a bar to the Division's jurisdiction over the work being done by Diaz violates the plain language of the statute and contravenes its objectives, legislative history, canons of statutory interpretation, and public policy. The Act was "enacted for the purpose of assuring safe and healthful working conditions for all California working men and women …." (Lab. Code, § 6300.) It grants the Division "the power, jurisdiction, and supervision over every employment and place of employment in this state," defining place of employment as "any place, and the premises appurtenant thereto, where employment is carried on, *except a place where the health and safety jurisdiction is vested by law*

[2] (See *Velasquez v. Southern Pacific Transp. Co.*, 734 F.2d 216, 217 (5th Cir. 1984) (Fifth Circuit held that pursuant to 1978 FRA policy statement explicitly prohibiting OSHA regulations from applying to railroad bridges, those regulations could not be relied on to demonstrate negligence at trial); *Cearley v. General American Transp. Corp.*, 186 F.3d 887, 889 (8th Cir. 1999) [Eighth Circuit found that the FRA had preempted OSHA regulation of fixed and stationary platforms on top of tank cars]; *Burlington Northern R. Co. v. State of Mont.*, 880 F.2d 1104, 1107 (9th Cir. 1989); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178 (1978); (Ex. JJ *Chief Admin. Officer of the Occupational Safety & Health Admin. v. Savage Servs. Corp.*, No. 3:19-cv-00147-LRH-WGC (D. Nev. Dec.2, 2019).)

in, and actively exercised by, any state or federal agency other than the division." (Lab. Code, §§ 6307, 6303, subd. (a) (Emphasis added.).)

The Division further argues that Labor Code section 6800 grants the Division jurisdiction over "(a) The safety and health of railroad employees employed in offices and in shops devoted to the construction, maintenance or repair of railroad equipment, and all other railroad employees with respect to occupational health, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water…(c)The safety of employees of all other public utilities as defined in the Public Utilities Act." (Lab. Code, § 6800.)

Labor Code § 6800 (a) only applies to:

> *(a)* The safety and health of railroad employees employed in offices *and in shops devoted to the construction, maintenance or repair of railroad equipment*, and all other railroad employees with respect to occupational health, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water. …

(Emphasis added.)

The injured employee fell off of a railcar in the railroad yard. Diaz was not working in an office or in a shop devoted to construction, maintenance or repair of railroad equipment. This accident had nothing to do with air contaminants, noise, sanitation or drinking water.

In *S.F. Bay Area Rapid Transit Dist*., *supra,* 111 Cal. App. 3d at 364-66 held that "[T]he specific provisions of [Labor Code] section 6800 must be held to control over the general provisions of the California Occupational Safety and Health Act of 1973 (including Lab. Code § 6307) …") (See also *Atchison, T.&S.F.Ry.Co. v. Div of Ind Safety*, (1976) 64 Cal.App.3d 188, 192.) Indeed, the Division's jurisdiction under Labor Code section 6800 is explicitly limited to specific categories of railroad employees, namely those:

> [E]mployed in offices and shops devoted to the construction, maintenance or repair of railroad equipment, and all other railroad employees concerning occupational health, including, but not limited to, air contaminants, noise, sanitation and availability of drinking water.

The subject accident took place on a railroad car in a railroad yard. The injured employee, Diaz was attempting to disconnect the IBC when he tripped on an IBC storage box on the railcar catwalk and fell approximately five feet off the catwalk to the ground. He was not engaged in any activity or subject to the applicable categories identified in Labor Code section 6800.

The Division also submitted a declaration dated January 24, 2025, from District Manager David Rodriguez (Rodriguez). Rodriguez did not testify in the hearing. The declaration referenced

an email dated August 2, 2023, from FRA Staff Director, Hazardous Materials Division, Mark Maday, in which he states, "In general, FRA does not have oversight authority of trans-loading operations" and that as part of the leasing arrangement it became a "private" track. Rodriguez then claims, without reference to any supporting evidence or facts, that Parsec was engaged in transloading operations. Rodriguez does not explain what "transloading operations" means. From there, he claims that he was "informed and therefore believed" that Parsec was leasing track within the facility and therefore the FRA did not "exercise oversight over occupational safety and health."

Employer argues in its closing brief that the transloading described in the Rodriguez declaration involves transferring cargo from railcars to other vehicles, a process distinct from Parsec's operations, which focus solely on moving intermodal containers on railcars and managing the railroad yard. There was simply no evidence presented either from the Division's investigation or otherwise that Parsec was engaged in transloading or that it leased part of the track making it private, and thus its operations were not subject to the FRA. To the contrary, the evidence presented was that Parsec's operations were in a railyard subject to FRA oversight including inspections, audits of the rail yards, systems, equipment, training, operations and employee safety, as well as potential fines for non-compliance with FRA regulations. (See Ex. DD and EE (FRA Inspection Reports conducted at Hobart Yard on December 3, 2024, and at Miami Springs, Florida on November 7, 2017, respectively).) Moreover, an email from an FRA employee does not supersede the official statements and determinations made by the FRA that cover the railroad operations performed by Parsec. As such, the declaration submitted by the Division fails to demonstrate that the FRA lacks jurisdiction over Parsec's operations, as its activities are clearly within the scope of FRA oversight.

There was simply no evidence presented by the Division that Parsec was engaged in transloading or that it leased part of the track making it private, and thus its operations were not subject to the FRA. On the contrary, Employer addressed this issue in its closing brief and as outlined above, Parsec's operations are in fact subject to FRA oversight including inspections, audits of the rail yards, systems, equipment, training, operations and employee safety, as well as potential fines for non-compliance with FRA regulations.

Next, the Division argues that the legislative history of Labor Code section 6800 is of assistance to show the legislature was looking to fill a gap in protecting railroad workers in California. The Division argues that the legislative history behind Labor Code section 6800 was meant to give the Division jurisdiction over safety and health of railroad employees when the FRA and California Public Utility Commission code sections were not actively exercised.

The Division further argues in its closing brief that there is no evidence that FRA or Fed/OSHA was used to investigate this fall. If there is a gap in protecting employee safety, then having the Division step in is appropriate. Construing "the allocation of health and safety

jurisdiction between different agencies should be [done] in a manner that minimizes any potential gap in coverage. [citation] … the narrow interpretation of the exemption … furthers the broad remedial purposes of the legislation." (*United Air Lines, Inc. v. Occupational Safety & Health Appeals Bd.* (1982) 32 Cal.3d 762, 771.)

Employer responds by arguing that the materials submitted by the Division do not contain legislative history but rather represent various proposals and recommendations by the Department of Industrial Relations (DIR) to revise the statutory language to expand the jurisdiction to cover all railroad employees performing railroad operations. In doing so, DIR acknowledged that it did not have jurisdiction based on the current interpretations of the statutory language from court of appeal decisions. (See Ex. 32, Attachment B, pps. 15-16.) DIR thus proposed to amend Labor Code Section 6800, subdivision (a), to explicitly give the Division jurisdiction over the "safety and health of railroad employees." (*Id*. at 17-18.) None of the proposed revisions were accepted and made law.

The Division has the burden of proof to show it had jurisdiction, not whether Fed/OSHA conducted an investigation. The question is whether the Division had jurisdiction to issue the citation.

Diaz was working in a railroad yard on a rail car under the jurisdiction of the FRA, not under the Division's jurisdiction.

III. *Federal Preemption Over State Regulation of Railroads*

The FRA contains an express preemption clause with regard to State regulation of railroad safety matters where there are regulations "covering" the same subject matter:

> A State may adopt or continue in force a law, regulation, or order related to railroad safety or security *until the Secretary of Transportation* (with respect to railroad safety matters) [...] *prescribes a regulation or issues an order covering the subject matter of the State requirement.*

(49 U.S.C. § 20106 (a)(2). Emphasis added.)

> To prevail on the claim that the regulations have pre-emptive effect, [...] *preemption will lie only if the federal regulations substantially subsume the subject matter of the relevant state law.* [...]

(*Southern Pacific Transportation*, *supra*, Cal/OSHA App. 94-3142, citing to CSX *Transportation, Inc. v. Easterwood (1993) 507 U.S. 658*. Emphasis added.)

Railway safety is regulated at the federal level by the FRA, through the implementation of the FRSA (49 U.S.C. § 20101, et seq.). The FRA, as the regulatory agency for the Secretary of

Transportation, has jurisdiction for "every area of railroad safety..." (49 U.S.C. §20103(a).)

The injured employee Diaz was not engaged in any activity or subject to the applicable categories identified in Labor Code section 6800.

In addition to federal preemption as a general consideration, the Division's own enabling statutes preclude the Division from regulating the circumstances that led to the accident in this matter.

As set forth above, the FRA, as the regulatory agency for the Secretary of Transportation, has jurisdiction for "every area of railroad safety..." (49 U.S.C. § 20103(a).) The FRA divested itself of some aspects of employee health and safety. However, the FRA determined that its role "in the area of occupational safety in the immediate future is one that will concentrate our limited resources in addressing hazardous working conditions in those traditional areas of railroad operations in which we have special competence." (43 Fed. Reg. 10585 (March 14, 1978).)

Thus, because the railroad yard where the accident occurred was "a place where health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division," it was not a "place of employment" over which the Division has jurisdiction. (Lab. Code §§ 6303, subd. (a), and 6307.)

California has appropriately left the regulation of railroad operations to the FRSA, as was originally intended by Congress. Nonetheless, in the instant matter, the Division seeks to infringe upon the FRA's authority through the issuance of a citation that attempts to regulate in an area that is exclusively under FRSA regulations. This is not allowed under the facts of the case.

CONCLUSION

The Division has no jurisdiction to issue a citation in this case. Labor Code section 6800 does not apply under the facts of the case. Even if the Division could pursue a violation of section 3210, the Division concluded that since this was not a case of the use of guardrails or handholds which are impracticable due to design or work processes, Exception 9 to section 3210, subdivision (b), applies. Section 3210, subdivision (b), was not cited in this case.

As set forth above, the lack of a set of State regulations that apply to the facts of the subject case in a railroad yard and railroad operations and fall protection evidences that the Division ceded its regulatory authority of those particular operations to the FRA.

This accident took place at a railroad yard which was "a place where health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than

the division," it was not a "place of employment" over which the Division has jurisdiction. (Lab. Code §§ 6303, subd. (a), and 6307.)

It is found that there is federal preemption as a general consideration, and that the Division's own enabling statutes preclude the Division from regulating the circumstances that led to the accident in this matter. The Division does not have jurisdiction in this matter. The citation is vacated.

IT IS SO ORDERED

/s/ Leslie E. Murad, II

Dated**:** 10/08/2026

Leslie E. Murad, II
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.