

EMPLOYER STATUS DETERMINATION**Grandlux Railway, LLC**

This is the decision of the Railroad Retirement Board regarding the continued status of the Grandlux Railway, LLC, (GLR) (B.A. No. 6706) 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).

For the initial coverage determination (Board Coverage Decision (B.C.D.) 07-24), information regarding GLR was provided by Mr. John Thompson, Senior Vice President & Chief Financial Officer, and by Yvonne Cook, Director of Finance. Mr. Thompson notified the Secretary to the Board that on May 18, 2006, GrandLux purchased "certain assets" of American Orient Express Railway Company, LLC (B.A. No. 9638). According to the Asset Purchase Agreement, GLR purchased "all assets * * * of every kind and type" including "All tangible personal property, vehicles, equipment, machinery * * * furniture, furnishings, appliances, vehicles and other tangible personal property of every description and kind and all replacement parts therefore * * * ". GLR also purchased all goodwill and the rights to the name "American Orient Express Railway Company". GLR began operations June 5, 2006 with 62 employees. By letter of June 27, 2006, Mr. Robert Bergen, attorney for American Orient Express Railway Company LLC (AOE Railway) confirmed that on May 18, 2006, AOE Railway "sold their operating assets to an unrelated third party" and consequently "AOE Railway no longer operate(s) a rail tour business"¹.

The evidence of record indicated that GLR purchased the rail passenger cars previously used by AOE Railway, and that AOE Railway transferred to GLR the rights under the Operating Agreement with Amtrak to run passenger excursion trains. The STB previously determined that the contract between AOE Railway and Amtrak constituted operation of a railroad by AOE Railway under agreement as defined by 49 U.S.C. § 10102(5). American Orient Express Railway Company LLC—Petition for Declaratory Order, Finance Docket No. 34502 (December 27, 2005). By transferring this agreement from AOE Railway to GLR, the Board found that GLR operated rail transportation just as AOE Railway previously did, and accordingly, found that GLR became a rail carrier employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective May 18, 2006, the date AOE Railway transferred its assets and operating agreement rights to GLR.

In a letter dated February 10, 2009, Mr. David B. Jardinico, Director of r² advisors llc (r²) advised the agency that all railroad related operations for GLR ceased on August 31, 2008. That was also the last date employees were compensated. At the time of Mr. Jardinico's letter, there were no plans to dissolve GLR. Additional information was provided by Mr. Thomas M. Kim, Senior Managing Director of r². According to Mr. Kim, r²

¹ AOR Railway was terminated as a covered employer effective May 18, 2006, the date it transferred its assets and operating agreement to GLR.

is an advisory firm hired by the secured lender for GLR. The secured lender, formerly Hilco Financial and subsequently Bayerische Hypo-und Vereinsbank AG, foreclosed on the assets of GLR due to the inability of GLR to service its debt. According to Mr. Kim, all of the assets of GLR have been disposed of and the funds received have been returned to the secured lender.

The evidence of record establishes that GLR no longer possesses the characteristics of a railroad employer. The Board therefore finds that effective August 31, 2008, the date operations ended and employees were last compensated. Grandlux Railway, LLC ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

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