

**EMPLOYER DETERMINATION
Grapevine Vintage Railroad**

This is a determination of the Railroad Retirement Board concerning the status of Grapevine Vintage Railroad (GVRX) 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).

Information regarding GVRX was provided by its general manager, Tom Wayne. According to Mr. Wayne, in December 2000, the City of Grapevine assumed operations of the Grapevine Forth Worth Stockyards Steam Excursion Train. He stated that the City of Grapevine leased Forth Worth and Western Railroad's (FWWR) (B.A. No. 2861) crews to operate the equipment and hired steam and diesel mechanics to maintain the equipment. However, on October 15, 2006, the City of Grapevine ended its arrangement with FWWR and began operating its own services through GVRX. GVRX is a division of the Grapevine Convention and Visitors Bureau, a department of the City of Grapevine. GVRX, as did its predecessor, provides a non-profit tourist excursion train that runs from Grapevine, Texas Depot to the Forth Worth, Texas Stockyards. Mr. Wayne stated that operations of the excursion train are conducted on Fridays, Saturdays and Sundays from February through December of each year. GVRX will operate its rail service from mile post 632.27 to mile post 610.50 located on the Cotton Belt Line (located inside Tarrant County, Texas) and GVRX will also operate from mile post 6.5 to mile post 1.7 on the Forth Worth Subdivision. Mr. Wayne stated that GVRX does not own or maintain any tracks. However, GVRX has trackage rights leased from the Dallas Area Rapid Transit and the Regional Rail Right-Of-Way Corporation, and a joint user trackage rights agreement with FWWR. Mr. Wayne stated that GVRX employs 16 employees¹ and the excursion train expects to carry approximately 85,000 passengers per year. Mr. Wayne further stated that GVRX does not interchange with any railroads.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," to include

- (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;

¹ In a conversation held on September 15, 2006, Ms. Caroline VanDuzee with GVRX advised the Board's Office of General Counsel that employees from other railroads will provide the operating services for GVRX's excursion train.

(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, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

A similar definition is found in sections 1(a) and (b) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a) & (b)).

Section 10501 of Title 49 of the United States Code provides in pertinent part that the Surface Transportation Board has jurisdiction over rail carrier:

* * * transportation in the United States between a place in--

(A) a State and a place in the same or another State as part of the interstate rail network. [49 U.S.C. § 10501(a)(2)(A).]

The rail service provided by GVRX is characterized as a tourist or excursion railroad operated solely for recreational and amusement purposes. Since passengers are to be transported solely within one state, under section 10501(a)(2)(A) above, GVRX would not be subject to Surface Transportation Board jurisdiction and would thus also not fall within the definition of a carrier "employer" set out in section 1(a)(1)(i) of the Railroad Retirement Act (RRA). Nor does it fall within any other definition of an "employer" under the RRA. Therefore, the Board finds that Grapevine Vintage Railroad is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

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