

Sigest

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45-106

The Director of Retirement Claims

The General Counsel

Lowell M. Palmer ✓
Palmer Railroad ✓
Palmer Lines in Missouri and Arkansas



In response to your request, I herewith submit my opinion on the following:

QUESTION

Is service to Lowell M. Palmer in the operation of a railroad at or near Poplar Bluff, Missouri, known sometimes as "Palmer Railroad" and "Palmer Lines in Missouri and Arkansas" creditable under the Railroad Retirement Act?

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

We find no record of "Lowell E. Palmer" but from the information furnished by the applicant in connection with his application, it appears that he has reference to Lowell M. Palmer who was identified with the American Sugar Refining Company and its subsidiary, Brooklyn Cooperage Company, and who owned and operated numerous logging roads in the vicinity of Poplar Bluff, Missouri. The applicant, in a letter received by the Board June 29, 1936, states:

"The carrier, Lowell E. Palmer, Poplar Bluff, Mo., was a log road, which used the joint track of the St. Louis, Iron Mountain & Southern Railroad from Poplar Bluff, Mo. to Ash Hill, Mo.; to my own knowledge, this road has been abandoned."

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In a subsequent letter of date March 3, 1937, he states:

"Received my salary from the above (Lowell E. Palmer), standard rates of pay, and operated under rules of the St. Louis, Iron Mountain & Southern. . . . I understand this was later known as the Butler County Railroad."

The valuation report of the Interstate Commerce Commission on the Butler County Railroad Company^{1/} (97 V.R. 602) shows that that company was incorporated on September 1, 1905, and acquired about 19 miles of its railroad by construction and the balance of about 29 miles by purchase from the Brooklyn Cooperage Company.^{2/} That portion of the mileage table showing the segments acquired by purchase follows:

	<u>Mileage in Missouri</u>	<u>Mileage in Arkansas</u>	<u>Date of Purchase</u>
Lowell Junction, Missouri to Broseley, Missouri	6.81		10/17/05
Broseley, Missouri to Sweet Gum, Missouri	9.24		1/27/11
Sweet Gum, Missouri to the Missouri-Arkansas State Line	3.29		9/9/12
Missouri-Arkansas State Line to Milepost 26.74 Arkansas		4.21	9/22/13
Milepost 26.74 to Meade, Arkansas		5.47	12/1/14
Total Purchase	19.34	9.68	

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- 1/ A carrier by railroad subject to part I of the Interstate Commerce Act, whose railroad has since September 1, 1927, been operated under lease by the Frisco. It was a "carrier employer" on August 29, 1935; see Item No. 867 in the Status Book and General Counsel's Opinion No. L-41-529. From the date of its incorporation to September 1, 1927, the Butler County Railroad Company was controlled by the Brooklyn Cooperage Company.
- 2/ It has been held that Brooklyn Cooperage Company was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act. See Item No. 756 in the Status Book and General Counsel's Opinion No. L-38-1194. ✓

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The report contains the statement, "The carrier's first move toward acquiring a railroad was the purchase of the Brooklyn Cooperage Company's logging road between Lowell Junction, Missouri, and Broseley, Missouri, about 7 miles, for \$65,000 par value of capital stock."

Concerning the acquisition by the Butler County Railroad Company of the first portion of its road, J. M. Kurn, Trustee, St. Louis-San Francisco Railway Company, in a letter dated May 22, 1943, states:

"On September 6, 1905, the Brooklyn Cooperage Company and Lowell M. Palmer submitted a proposition to the Butler County Railroad Company to sell to it that portion of the standard gauge railroad then known as the 'Palmer Lines in Missouri and Arkansas' and also known as the 'Palmer Railroad', which had been operated as a logging railroad.

"The proposition was accepted by the Board of Directors of the Butler County Railroad Company at their first meeting held in the office of Lowell M. Palmer in the City of Poplar Bluff, Mo., on September 11, 1905.

"By their deeds dated October 17, 1905, the Brooklyn Cooperage Company and Marion M. Miller, Trustee for Lowell M. Palmer, conveyed to the Butler County Railroad Company a strip of land 100 feet wide and 36,164 feet (6.85 miles) long, on which was located a standard gauge railroad track. This was the first section of railroad line acquired by the Butler County Railroad Company.

"The records of the Butler County Railroad Company do not disclose whether the property it acquired was ever operated as a common carrier, and it is suggested that such information may be obtained from the Brooklyn Cooperage Company, New York, N. Y."

"Palmer Lines in Missouri and Arkansas" filed three circulars with the Interstate Commerce Commission as follows:

Circular No. 12 for the year 1904, which contains the information that the road was not chartered; that it was projected from Poplar Bluff, Missouri to Clay County, Arkansas, 100 miles; that it was not intended for public business; and that 25 miles (all in Missouri) were in operation on June 30, 1904.

Circular No. 11 for the year 1905 states that the road was not chartered; that it was not a common carrier; that it was a private logging road; and that it had in operation on June 30, 1905, 22.75 miles (all in Missouri).

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Circular No. 11 for the year 1906 states that the road was not chartered; that it was not in operation on June 30, 1906; that its existence had been terminated; and that it had conveyed its track, equipment and other assets to the Butler County Railroad Company.

"Palmer Lines in Missouri and Arkansas" appears in the Official Guide of Railways from April 1904 to October 1905. Lowell M. Palmer is shown as president and the address of its general offices as 184 Front Street, New York City. Substantially the following appears in all issues:

In operation from Poplar Bluff to:

Palmers Mills	1 mile
Lowell Junction	8.2 "
Marshalls Mill	9.7 "
Rossville Spur	11.2 "
Datesville	13.5 "
Bailey	15.2 "
Nyssa	17.5 "
Quercus	18.5 "
Hicoria	20.0 "
Melville	21.0 "

A connection is shown with the St. Louis, Iron Mountain and Southern Railway Company and the statement is made that it offers "freight service only."

In connection with the applicant's statement that "Lowell E. Palmer" operated over the rails of the Iron Mountain between Poplar Bluff and Ash Hill, the Missouri Pacific Railroad Company has submitted a copy of an agreement dated August 1, 1899, between Lowell M. Palmer and the Iron Mountain by which the Iron Mountain granted Palmer the right to "connect his tracks with those of the first party [Iron Mountain] on the Cairo Division at or near Poplar Bluff, and also at a point west of Ash Hill, Butler County, Mo."

From the foregoing information it is clear that Lowell M. Palmer in the operation of certain lines of railroad under the title "Palmer Lines in Missouri and Arkansas" or "Palmer Railroad," and which railroad properties were subsequently owned and operated by the Butler County Railroad Company, was a predecessor both in ownership and operation of that carrier. As to whether or not Lowell M. Palmer, in these operations, was a common carrier by railroad, the following appears:

The valuation report of the Interstate Commerce Commission on the Butler County Railroad Company (97 V.R. 602) contains the statement that the carrier's first move toward acquiring its railroad was the purchase of the "Brooklyn Cooperage Company's logging road" and that "that

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part of the road formerly owned by the Brooklyn Cooperage Company was used for logging purposes until it was purchased by the carrier." Mr. J. M. Kurn, Trustee, St. Louis-San Francisco Railway Company, in his letter of May 22, 1943, describing the first section of road acquired by the Butler County Railroad Company, refers to that particular railroad as having been known as "Palmer Lines in Missouri and Arkansas" and "Palmer Railroad" which had been operated as a logging railroad. In letters dated June 16, 1943, and October 20, 1943, Mr. P. M. Ripley, President, Brooklyn Cooperage Company, states that an examination of all of the company's old files does not disclose whether or not the so-called Palmer Lines "handled freight either under contract or common carrier provisions" but that "It is our distinct impression that the so-called 'Palmer Lines' did not act as a common carrier during its existence." The circulars filed with the Commission and described in this memorandum state definitely that the "Palmer Lines in Missouri and Arkansas" was not a common carrier; that it was not intended for public business; and that it was a private logging road. Finally the applicant himself states that "Lowell E. Palmer, Poplar Bluff, Mo., was a log road."

The records of the Interstate Commerce Commission do not indicate that Lowell M. Palmer, "Palmer Lines in Missouri and Arkansas" or "Palmer Railroad" filed with it any tariffs, concurrences, powers of attorney or annual reports. There is nothing in the agreement of August 1, 1899, between Lowell M. Palmer and the Iron Mountain which would indicate in any way that Palmer was a common carrier.

The only information we have which gives any indication that "Palmer Lines in Missouri and Arkansas" might have offered its services to the general public is its appearance in the Official Guide during the period April 1904 to October 1905, wherein the statement is made that it connects with the Iron Mountain at Poplar Bluff, Missouri, and operates "freight service only." However, no schedules are shown.

On the basis of all the foregoing, it is my opinion that Lowell M. Palmer in his operation of a railroad at or near Poplar Bluff, Missouri, known sometimes as "Palmer Railroad" and "Palmer Lines in Missouri and Arkansas" was not an express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act and was not a "predecessor" within the meaning of Sections 1(f) and 202 of the Act approved June 24, 1937. Consequently he was not by reason of that operation an "employer" within the meaning of Section 1(a) of the Railroad Retirement Act and service to him in that operation is not creditable.

Myles F. Gibbons
General Counsel