

JUL 27 1946

The Director of Retirement Claims

The General Counsel

The Pittsburg & Midway Coal Mining Company
(Pittsburg, Kansas)

[REDACTED]
[REDACTED] section foreman at Pittsburg,
Kansas, from February 1, 1924 to October 31, 1939

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

QUESTION

Has The Pittsburg & Midway Coal Mining Company ever been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and is service to it creditable under either of those Acts?

OPINION

It is my opinion that The Pittsburg & Midway Coal Mining Company has never been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it is not creditable under either of those Acts.

DISCUSSION

An examination of Poor's and Moody's manuals does not reveal the name of The Pittsburg & Midway Coal Mining Company. From information furnished by Mr. George E. Nettels, Vice President, The Pittsburg & Midway Coal Mining Company, in a response dated October 3, 1939, to our questionnaire, Form LA-2-b (revised) and in a letter dated June 29, 1945, the following appears:

The Pittsburg & Midway Coal Mining Company (hereinafter sometimes referred to as the "Coal Company") was incorporated in 1885 under

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the laws of Missouri "For the mining and production of coal." The Coal Company has never been directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad. The Coal Company has never provided rail transportation service for any industry, except during the period 1941-43 it transported mine refuse from the mines to its Central Cleaning Plant near West Mineral, Kansas, where the gob was processed in the Mineral Products Company's pyrite mill located immediately adjacent to the Central Cleaning Plant. The Coal Company has never held itself out to the public as a common carrier by railroad and has no "rights" under that provision.

There have been submitted by Mr. Nettels copies of the following contracts:

1. Contract dated May 27, 1897, between the Coal Company and The Atchison, Topeka and Santa Fe Railway Company.
2. Contract dated July 9, 1934, between the Coal Company, the Atchison, Topeka & Santa Fe, the Missouri Pacific, the Frisco, and the Clemens Coal Company.
3. Contract dated September 18, 1934, between the same parties.
4. Contract dated November 1, 1934, between the Coal Company on the one hand and the Missouri Pacific and the Missouri-Kansas-Texas Railroad Company on the other.
5. Contract dated June 1, 1935, between the Coal Company and the Missouri Pacific.

Mostly, the contracts provide for the use of certain trackage of the Coal Company by one or more of the carriers for the purpose of serving the mines of the Coal Company; the use by the Coal Company jointly with one of the carriers of certain trackage owned by the carrier; the sale of coal to the carriers, and the use by the Coal Company of portions of the lines of the carriers for movement of coal from the mines to the processing plant and the by-products plant of the Coal Company and the delivery of the coal and its by-products to the carriers. The contract of May 27, 1897, provided for the acquisition by the Coal Company from the Atchison, Topeka & Santa Fe of the capital stock of the Midway Railway Company "for the purpose of having the use of the railway in connection with the operation of its said coal mines." However, it does not appear that the Midway Railway Company was a carrier by railroad subject to part I of the Interstate Commerce Act; its name does not appear in "Statistics of Railways in the United States" or in Poor's or Moody's manuals except that in Poor's Railroads for the year 1897 the list of securities pledged under the general mortgage contains the name of the Midway Railway Company. There is no

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information to show whether the Midway property was operated either by its own organization or under lease, or at all.

It appears from the foregoing that the railroad operations conducted by The Pittsburgh & Midway Coal Mining Company, which apparently has been engaged exclusively in the mining, processing and sale of coal and its by-products, have been in the nature of "private" or at the most "contract" carrier operations rather than common carrier operations and that it has not been an express company, sleeping-car company or carrier by railroad. Therefore, and since there is no showing that it was owned or controlled by or under common control with any such company or carrier and since, in any event, there is no evidence that it has ever been engaged in the performance of any services in connection with the transportation of passengers or property by railroad, within the meaning of the Railroad Retirement Act, it is my opinion that The Pittsburgh & Midway Coal Mining Company has never been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it is not creditable under either of those Acts.

Hyles F. Gibbons
General Counsel

HPC:lr