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L-41-587

Washington, D. C.
November 15, 1941

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micrographed*

Mr. [REDACTED], General Manager
Old Union Stockyards Company

Dear Sir:

Please refer to your letter and attachments of September 11, 1941 concerning the status of the Old Union Stockyards Company under the Railroad Retirement and Railroad Unemployment Insurance Acts.

From the answers to Questionnaire Form IQ-2-b(revised) and to certain additional questions the following appears: The Old Union Stockyards Company was incorporated in September, 1930 in Washington, apparently succeeding the Old Spokane Union Stockyards Company. It is the only public stockyards in Spokane, Washington. It owns and operates the platforms, chutes and receiving pens which are used in the loading and unloading of rail shipments of livestock. The railroads pay the Stockyards Company for these services. The Stockyards Company performs all the work in connection with the loading and unloading of rail borne livestock with its employees and it does not permit the railroads to use their employees in the performance of these services. It has been posted with the Secretary of Agriculture as a public stockyards. All the foregoing information is substantially true throughout the existence of the Stockyards Company.

On the basis of the foregoing, I am of the opinion that the Stockyards Company was on August 29, 1935, and at all times thereafter has been a carrier by railroad subject to part I of the Interstate Commerce Act. Consequently the Stockyards Company has been during that period an "employer" within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts. Insofar as annuities under the Railroad Retirement Act are concerned, service rendered to it is creditable in accordance with the provisions of Sections 1(f) and 202 of the Act of June 24, 1937 from the date of its incorporation, some time in September 1930. For the purpose of determining the exact date of coverage of the Stockyards Company, please inform me of the precise date of its incorporation.

My conclusion that the Stockyards Company has been a carrier by railroad subject to the Interstate Commerce Act follows from the decisions of the United States Supreme Court in Union Stock Yard and Transit Company of Chicago v. United States, 308 U.S. 213 (1939) and the Interstate Commerce Commission in Status of Public Stockyard Companies, Ex parte 127, April 1941. The Supreme Court held in its decision the Union Stock Yard and Transit Company of Chicago which performed the services of loading and unloading livestock for railroads at a public

Mr. [REDACTED], General Manager

stockyard to be a carrier by railroad subject to the Interstate Commerce Act. In reaching this conclusion the Court, obviously setting forth the essentials in such situations of a carrier by railroad subject to the Interstate Commerce Act, stated at p. 217:

"It is enough that the loading and unloading are rail transportation services performed at a railroad terminal as a common or public calling by one who in rendering it engages in the transportation of property by railroad within the meaning of the Act."

Clearly the Stockyards Company meets all the requirements of the above test. The loading and unloading of livestock for railroads at public stockyards are obviously railroad transportation services. Union Stock Yard and Transit Company of Chicago v. United States, supra; Status of Public Stockyard Companies, supra; Section 15(5) of the Interstate Commerce Act. Also, it is evident that the Stockyards Company is as much a railroad terminal as the Union Stock Yard, being the only public stockyard in Spokane, and, as Union Stock Yard was in Chicago, apparently being the principal point in the Spokane area for receipt or shipment of livestock by railroad and being used by the railroads serving Spokane. Finally the Stockyards Company, like the Union Stock Yard, is engaged in a common or public calling. Thus it is a public stockyards company and holds itself out to the railroads and the public as performing the loading and unloading services. In addition it is to be noted that the Interstate Commerce Commission (Status of Public Stockyard Companies, supra) held various public stock yards to be common carriers by railroad subject to the Interstate Commerce Act as to their railroad loading and unloading activities. This decision expresses the view, in effect, that the facts with respect to each of such companies are so similar to those existing at the Union Stock Yard at Chicago that the decision of the Supreme Court as to that company is controlling as to those other companies with respect to their loading and unloading activities for railroads.

In view of my opinion, previously stated, that the Old Union Stockyards Company is an "employer" under the Railroad Retirement and the Railroad Unemployment Insurance Acts, it will receive in due course instructions regarding the filing of reports and the supplying of information required under the Acts.

Very truly yours,

[REDACTED]
General Counsel