
MEMORANDUM

WASHINGTON, D. C.

August 5, 1940

TO The Director, Wage and Service Records

FROM The General Counsel

SUBJECT The Southwest Missouri Railroad Company (Abandonment)

In Northeast Oklahoma R. Co. Acquisition, 230 I.C.C. 774 (1939), the Interstate Commerce Commission found that a purchase by the Northeast Oklahoma Railroad Company of certain properties of The Southwest Missouri Railroad Company, constituting substantially the entire line of the latter company, would be in the public interest, and the Commission indicated that an order approving the purchase would be entered. After the Commission's report was noted in this office, an investigation was initiated in order to determine whether The Southwest Missouri Railroad Company would continue to be an "employer" within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts. The facts discussed herein were obtained from records of the Interstate Commerce Commission and from reports by the company or its trustee in bankruptcy.

In response to our request for completion of Form LQ-2-B (revised), with respect to the ownership, control and operations of the railroad company after the transfer of most of its rail properties, Mr. Clyde B. Whitwell, auditor of the company, replied that all its operations ceased on June 2, 1939. Although further information was secured concerning the railroad company's abandonment of carrier operations, its bus operations and their apparent abandonment, and its ownership and control until the apparent abandonment of bus operations, a ruling in this matter was not expedited because of our assumption that the company's interest had been completely liquidated, and that no further employee reports should be expected. Recently, however, my attention has been directed to the fact that current reports to the Bureau of Wage and Service Records have been continued in the name of this company. It seems advisable, therefore, to determine whether or not the company and its trustee have ceased to be "employers" under the Railroad Retirement and Railroad Unemployment Insurance Acts and, if so, upon what date their employer status terminated.

All passenger rail operations of the company were stopped prior to 1939, and all passenger tariffs which the company had filed with the Interstate Commerce Commission were cancelled by March 15, 1939, according to records of the Interstate Commerce Commission, although Mr. Whitwell has stated that the passenger service was discontinued without cancellation of tariffs. No passenger concurrences

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or powers of attorney had been issued by the company. The last freight tariffs of the company were cancelled by May 31, 1939, and freight concurrences and powers of attorney were all cancelled as of September 17, 1939; it should be noted, however, that prior to May 31, 1939, the Northeast Oklahoma Railroad Company apparently attempted to adopt the concurrences and powers of attorney relating to interstate freight which had been filed with the Commission by The Southwest Missouri Railroad Company, and the later cancellations by the company seem to have been made merely in order to comply with the method approved by the Interstate Commerce Commission. It is clear that as of May 31, 1939 the company and the trustee had ceased all rail operations, effectively cancelled all the company's tariffs, and indicated an intention to abandon permanently all rail operations; the later cancellation of freight concurrences and powers of attorney was merely a formal compliance with a requirement of the Interstate Commerce Commission after an abandonment of the rail operations had in fact been accomplished. Accordingly, the company ceased to be a "carrier-employer" on May 31, 1939. Compare Regulations, Section 202.11, 202.12.

The records of the Interstate Commerce Commission indicate that the company or its trustee operated one or more bus lines until June 2, 1939, and that several applications were pending for certificates which would authorize the company to operate as a common carrier of passengers by motor vehicles. These records also indicate, however, that all operations of the company and the trustee were discontinued early in the summer of 1939, and that a certificate which had been issued authorizing certain motor carrier operations was revoked by an order of September 12, 1939. In a return to our questionnaire, Form LQ-2-b (revised), forwarded to us on August 7, 1939 by the company's auditor, Mr. Whitwell, we were informed that the company discontinued all operations on June 2, 1939, but that prior to that time it was engaged, through its trustee, in the transportation of passengers by bus under tariffs filed with the Interstate Commerce Commission and with the regulating agency of the State of Missouri. Apart from its own earlier nature as a railroad, the company had never been owned or controlled by, under common control with, or affiliated in any way with an express or sleeping-car company, or carrier by railroad, subject to Part I of the Interstate Commerce Act. Upon the basis of this information, it may be concluded that after the cessation of its status as a "carrier-employer" on May 31, 1939, the company was not an "employer" under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

We have again communicated with the company concerning the operations which have been conducted subsequent to June 2, 1939, and have been informed by Mr. Whitwell that the reports of wages and salaries paid to the workmen by the trustee of Southwest Missouri Railroad Company after June 2, 1939 have been for wages and salaries during the period of liquidation of the property. These reports

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appear to have been made in the belief that the company and the trustee continued under the Railroad Retirement and Railroad Unemployment Insurance Acts through the period of liquidation following the cessation of "employer" activities by the company and its trustee. This information, however, serves only to confirm my conclusion that the company has not been an "employer" within the meaning of the Acts since May 31, 1939; and since the "employer" status of the company was then terminated, the trustee of the company also ceased to be an "employer" under the Acts on that date. See Cape Girardeau Northern Railroad Company, General Counsel's Opinion No. 1940 R.R. 44, approved B.O. 40-375.

Lester P. Schoene
General Counsel