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The Director of Retirement Claims

1745-97

The General Counsel

Ayer & Lord Tie Company ✓

[REDACTED]

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

QUESTION

Was the Ayer & Lord Tie Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?

OPINION

It is my opinion that the Ayer & Lord Tie Company, at least prior to June 1930, was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act.

DISCUSSION

The Ayer & Lord Tie Company appears in Poor's Industrials for the years 1928 to 1935, inclusive. For the years 1928 to 1931, inclusive, it is stated that the company was incorporated in 1893 in Illinois; that it manufactured timber products of all kinds, including railroad cross ties, poles, piling, fence posts, lumber, etc.; that it conducted wood preserving operations and also built boats and barges. Its plants are shown to have been located at Carbondale and Brookhart, Illinois; Louisville and Paducah, Kentucky; North Little Rock and Little Rock, Arkansas; Grenada, Mississippi; Montgomery, Alabama; Memphis, Tennessee, and New

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Orleans, Louisiana. In the manuals for the years 1932 to 1935, inclusive, it is said that control of the company was acquired in June 1930 by The Wood Preserving Corporation.

In a letter dated March 21, 1941, Mr. Edward A. Montgomery, Legal Department, Koppers Company, states that the Ayer & Lord Tie Company discontinued operations on July 31, 1934, and was dissolved on May 6, 1935.

Information furnished by Mr. H. C. Busch, former officer or employee of the Ayer & Lord Tie Company and now employed by the Koppers Company (Wood Preserving Division), Railway Exchange Building, Chicago, Illinois, is that the Ayer & Lord Tie Company was incorporated on August 15, 1893, under the laws of Illinois for "purchase and sale of Forest Products to Railroads"; that "Preservative Treatment Service to Railroads furnished beginning year 1903"; that the company discontinued operations on July 1, 1930; that the company did not directly or indirectly own or control any voting securities of an express company, sleeping-car company or carrier by railroad; that neither the company's record of security holders nor any other record or source of information indicates any direct or indirect ownership of the company's voting securities by an express company, sleeping-car company or carrier by railroad; that no officer or director of the company was an officer or director of any express company, sleeping-car company or carrier by railroad; that neither the company's record of security holders nor any other record or source of information indicates any direct or indirect ownership of the company's voting securities by a person or company who or which also directly or indirectly owned the voting securities of an express company, sleeping-car company or carrier by railroad; that the company sold the major portion of its products to the Illinois Central, Chicago, Rock Island and Pacific, and other railroads; and that it performed tie and lumber treating operations at its own plants for the Illinois Central Railroad Company, Chicago, Rock Island and Pacific, Missouri Pacific, Pennsylvania Railroad, Grand Trunk, Chicago and North Western, Chicago, Milwaukee and St. Paul, Santa Fe and other railroads. The Chicago, Rock Island and Pacific Railway Company has submitted a copy of a contract, dated November 20, 1907, which expired on December 1, 1917, under which the Ayer & Lord Tie Company agreed to construct at its own expense a tie treating plant on property owned by it and adjoining the right of way of the Choctaw, Oklahoma and Gulf Railroad Company (operated under lease by the Chicago, Rock Island and Pacific), near North Little Rock, Arkansas. The carrier agreed to construct and maintain all switch tracks (not including narrow gauge or tram tracks running from the cylinders of the plant to loading platforms) necessary to carry out the terms of the agreement. It was provided that the plant should be "devoted primarily" to treating railway materials for the carrier and that the company would not engage in the general commercial business of treating material at the plant when such operations would in any wise interfere with the prompt treatment of railway material for the carrier. The right of the company to engage in the "general commercial business" was conditioned upon its first complying with the terms of the agreement. In any event the company was not to treat any ties coming from Rock Island territory or territory

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adjacent to the Rock Island Lines for any person, firm or corporation other than the carrier. Mr. D. C. Rees, Superintendent of Employment and Group Insurance, Chicago, Rock Island and Pacific, informs us that the Chicago, Rock Island and Pacific Railway Company had no interest, financial or otherwise, in the Ayer & Lord Tie Company except as detailed in the contract and that the carrier "later agreed with the tie company that they could also treat materials for the Missouri Pacific Railway Company."

Obviously from the foregoing, the Ayer & Lord Tie Company was not an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. While operations of the same nature as those performed by the Ayer & Lord Tie Company, that is the treating with preservatives of railroad ties and other lumber, have been held to be services in connection with the transportation of passengers or property by railroad, the information available indicates that at least prior to June 1930 the company was not owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. Therefore, it is my opinion that the Ayer & Lord Tie Company, at least prior to June 1930, was not an "employer" under the Railroad Retirement Act and that service to it at least prior to that date is not creditable under that Act. See Status of American Creosoting Company (L-43-367) and Status of Federal Creosoting Company (L-44-534).

Myles F. Gibbons
General Counsel

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