

MEMORANDUM

February 10, 1944

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Western Ohio Railway Company
Western Ohio Railroad Company
Western Ohio Railway and Power Corporation

██████ - ██████
Service claimed as section foreman at Bluffton, Ohio,
from 1902 to 1932

██████ - ██████
Service claimed as motorman at Piqua, Ohio, from February
1916 to June 1925

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

QUESTION

1. Was the Western Ohio Railway Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
2. Was the Western Ohio Railroad Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
3. Was the Western Ohio Railway and Power Corporation an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?

OPINION

1. It is my opinion that the Western Ohio Railway Company was an "employer" under the Railroad Retirement Act from February 1, 1907 to June 30, 1910, and from July 1, 1915 to May 31, 1928, and that service to it during those periods is creditable under that Act.
2. It is my opinion that the Western Ohio Railroad Company was an "employer" under the Railroad Retirement Act from July 1, 1910 to June 30, 1915, and that service to it during that period is creditable under that Act.

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3. It is my opinion that the Western Ohio Railway and Power Corporation was an "employer" under the Railroad Retirement Act from June 1, 1928 to January 16, 1932, at least with respect to its railway operations, and that service to it during that period and at least in those operations is creditable under that Act.

DISCUSSION

Information in various editions of Poor's and Moody's manuals is that the Western Ohio Railway Company was incorporated October 11, 1900, under the laws of Ohio, and owned a line of standard gauge electric railway extending from Lima to Piqua; from Wapakoneta to Celina and St. Marys to Minster. In addition it operated the railway of the Lima, Findlay & Toledo Railway Company from Lima to Findlay, or a total of about 112 miles, all in the State of Ohio. On July 1, 1910, it leased its properties to the Western Ohio Railroad Company which had been incorporated on June 7, 1910, under the laws of Ohio, and which owned no railway property. On July 1, 1915, the lease was abrogated and the property returned to its owner, Western Ohio Railway Company, which latter company operated it until June 1, 1928, on which date the property was acquired by the Western Ohio Railway and Power Corporation. The Western Ohio Railway and Power Corporation operated the property until January 16, 1932, when the railway was abandoned and dismantled. The Western Ohio Railway and Power Corporation conducted electric light and power service in a number of communities along its lines. Its power and light properties were acquired by the Central Ohio Light & Power Company on December 5, 1930.

Because of the similarity in names of the three companies involved and of the fact all three operated with only minor changes the same line of railway, the Western Ohio Railway Company, the Western Ohio Railroad Company and the Western Ohio Railway and Power Corporation are hereinafter referred to collectively as the Western Ohio.

An examination of the records of the Interstate Commerce Commission shows that the Western Ohio filed with that Commission annual (electric) operating reports for the years 1908 to 1932 (January 16, 1932), inclusive. The Western Ohio filed 258 freight tariffs, the earliest effective date of any of these filings being February 1, 1907. It filed 242 freight concurrences, the earliest effective date being August 19, 1907, and 20 freight powers of attorney, the earliest effective date being October 25, 1907. All of its tariffs, concurrences and powers of attorney were cancelled or revoked by supplements filed July 6, 1932. The Western Ohio had physical connection with many electric lines, among which were the Cincinnati & Lake Erie, the Fort Wayne

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Lima Railroad Company, the Toledo, Fostoria & Fremont Railway and the Dayton & Troy Electric, and the Ohio Electric, all "carrier employers." It also had a physical connection with the Baltimore and Ohio at Wapakoneta, Ohio. The records do not show when these connections were first established but from an examination of the tariffs filed it appears that some of the connections were in effect at least as early as August 1907. It participated in freight rates published by a large number of carriers. The following table shows the equipment owned by the Western Ohio and its ratio of freight to passenger revenues:

<u>Year</u>	<u>REVENUES</u>		<u>Percentage of freight to pas- senger revenues</u>	<u>EQUIPMENT</u>			
	<u>Passengers</u>	<u>Freight</u>		<u>Passengers</u>		<u>Freight</u>	
				<u>E.</u>	<u>N.E.</u>	<u>E.</u>	<u>N.E.</u>
1908	\$337,390	\$39,745	11.8%	19		6	16
1909	335,102	43,857	13.1%	19		6	4
1910	362,401	49,539	13.6%	19		6	4
1911	395,186	56,571	14.3%	19		6	4
1912	390,855	57,302	14.6%	19		6	4
1913	387,158	64,450	16.6%	19		6	32
1914	422,019	72,419	17.1%	19		6	35
1915	399,175	68,363	17.2%	19		6	41
1916	393,826	74,718	18.9%	19		6	41
1917	413,481	107,938	24.7%	18		6	52
1918	391,563	156,012	39.1%	19		6	64
1919	449,964	182,175	40.4%	16		6	62
1920	484,571	204,817	42.2%	16	3	6	62
1921	443,655	192,657	43.4%	16	3	6	62
1922	401,797	230,199	57.2%	21	1	7	59
1923	385,374	278,949	72.3%	12	1	8	73
1924	332,561	328,510	98.8%	12	1	8	73
1925	272,788	341,691	125.0%	11	1	8	73
1926	244,131	358,899	147.0%	12		9	83
1927	213,846	367,135	171.0%	12		8	80
1928	178,719	398,343	223.0%	12		8	80
1929	156,826	410,907	262.0%	12		10	69
1930	131,006	252,598	193.0%	12		10	69
1931	91,945	165,020	179.0%	12		10	69
1932 to 1/16/32	4,232	2,371	56.0%	12		10	69

It is clear from the foregoing that from February 1, 1907, (the effective date of its first interstate freight tariff) to January 16, 1932 (the date it discontinued operations and abandoned its railroad), Western Ohio was a carrier by railroad subject to Part 1 of the Interstate Commerce Act. It filed with the Interstate Commerce Commission annual operating reports and numerous tariffs, concurrences

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and powers of attorney. On the basis of the information set out in this memorandum it is my opinion that the railway operated by the Western Ohio during the period from February 1, 1907 to January 16, 1932, was more than a street, suburban or interurban electric railway. The Western Ohio had physical connection with at least one steam carrier and a number of electric lines. It filed with the Interstate Commerce Commission a total of over 250 freight tariffs and over 200 freight concurrences. It owned and used substantial amounts of freight equipment and its ratio of freight to passenger revenues ran as high as 262 per cent and was at no time below 11.8 per cent. While the first annual report to the Interstate Commerce Commission covered the period July 1, 1907 to June 30, 1908, the Western Ohio had at least one interstate freight tariff in effect on February 1, 1907, and therefore it is reasonable to conclude that its ratio of freight to passenger revenues for the period February 1, 1907 to July 1, 1907, was not to any material extent below the ratio for the period July 1, 1907 to June 30, 1908, covered by its first annual report to the Interstate Commerce Commission.

In summary, service rendered to Western Ohio is creditable as follows:

Western Ohio Railway Company	from February 1, 1907 to June 30, 1910
" " " "	" July 1, 1915 to May 31, 1928
Western Ohio Railroad Company	" July 1, 1910 to June 30, 1915
Western Ohio Railway and Power Corporation (at least with respect to its railway operations)	" June 1, 1928 to January 16, 1932


General Counsel