

APR 18 1944

The Acting Director of Retirement Claims

The General Counsel

Hetch-Hetchy and Yosemite Valley Railway Company

[REDACTED]
Service claimed as brakeman and conductor at Tuolumne, California, from August 1900 to November 1902 and from April to June 1906

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

QUESTION

Was the Hetch-Hetchy and Yosemite Valley Railway Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?

OPINION

It is my opinion that the Hetch-Hetchy and Yosemite Valley Railway Company was an "employer" under the Railroad Retirement Act from January 1, 1901 to June 30, 1906, and that service to it during that period is creditable under that Act.

DISCUSSION

Information in various editions of Poor's Railroads is that the Hetch-Hetchy and Yosemite Valley Railway Company was chartered in 1900. Its projected railroad was to extend from Tuolumne to Hetch-Hetchy and Yosemite Valleys with various branches, a total of some 125 miles. It had completed up to January 1, 1901, about 25 miles in the vicinity of Tuolumne and Hetch-Hetchy, California. It apparently never completed more than 47 miles. The railroad was of narrow gauge (3 ft. 6 in.) and its motive power was steam. In the issues for the years 1901 and 1902 a connection with the Sierra Railway at Carters is shown. From 1903 to and including 1909 a connection with the same carrier at Tuolumne is listed. From 1901 to and including 1907, the following equipment is listed: 7 locomotives, 1 passenger car and 80 to 150 freight cars. From 1908 to 1910, inclusive, it owned 7 locomotives and 150 "logging cars." After

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1910 and through 1940 it appears only in the list of logging railroads. In Moody's Industrials for the years 1916 to 1924, inclusive, under West Side Lumber Company the following statement appears:

"Company owns the Hetch-Hetchy and Yosemite Valley Railways Company of California, the entire capital stock of which, except directors' shares, is deposited as part security for bond issue. Railroad property consists of approximately 36 miles of main line and 10 miles of sidings with equipment."

An examination of the records of the Interstate Commerce Commission does not indicate that the Hetch-Hetchy and Yosemite Valley Railway Company filed with that Commission any tariffs, concurrences, powers of attorney or annual reports. It does not appear to have been a party to any proceedings before the Commission and it has no "A" file. It did file with the Commission circulars for the years 1901 to 1926, inclusive.

Circular No. 12 for the year 1901 states that the company was chartered June 4, 1900; that it was intended for public business; and that its line was projected from Tuolumne to Yosemite Valley - 116 miles. Completed and in operation on June 30, 1901 - 21 miles, all in California. Circular No. 11 for the year 1902 states that it was "a public road. Principal business private." 23 miles were in operation on June 30, 1902. Circular No. 11 for the year 1903 states that the road was in operation on June 30, 1903; that it was operated by the West Side Lumber Company; that it was a private road; and that 20 miles were in operation. Circular No. 11 for the year 1904 states that it was a private road; that it was operated by the West Side Lumber Company; and that 25 miles were in operation. Circular No. 11 for the year 1905 states that the company is a common carrier; that its principal business is "hauling saw logs"; and that 35 miles were in operation. Circular No. 11 for the year 1906 - in response to question 3(a) "Is it a common carrier?" the answer is "Yes." In response to question 3(b), "If not a public road, what is its business?" the answer is "Hauling logs for sawmill." Circular No. 11 for the year 1907 states that the company is not a common carrier and that its business is hauling saw logs. Circular No. 11 for the year 1908 states that the company is not a common carrier and that its business is hauling logs for the West Side Lumber Company and that it is operated by the West Side Lumber Company. Circular No. 11 for the year 1909 states that the company is controlled by the West Side Lumber Company; that it is not a common carrier; and that its business is hauling logs for the West Side Lumber Company. It is operated by the West Side Lumber Company. Circulars No. 11 for the years 1910 to 1925, inclusive, give the same information. Circular No. 11 for the year 1926 states the company is not a common carrier; that it is a plant facility of the Tuolumne plant of the W. H. Pickering Lumber Company which owns the entire capital stock of the company. A connection is shown with the Sierra Railway Company of California at Tuolumne, California. Length of line operated is shown as 47 miles.

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The company appears in the Official Guide of Railways from March 1904 to July 1908, with the statement that it has "regular schedules for freight" and a connection with the Sierra Railway at Tuolumne is shown. In the issues from August 1908 to July 1910 it appears with the statement "Logging road. No freight or passenger service." No connection is shown.

Information furnished by Pillsbury, Madison & Sutro, attorneys for the West Side Lumber Company, in a letter dated March 30, 1944, is that the Hetch-Hetchy and Yosemite Valley Railway Company was incorporated on August 31, 1900, under the laws of California, "for the purpose of constructing, operating and maintaining a narrow gauge railroad for the carriage of persons, property and express from the Town of Carters (now the City of Tuolumne), Tuolumne County, California, and to act as a common carrier." It was dissolved June 7, 1943, but "as far back as 1906 the corporate existence was maintained solely to own a right of way. At least from that date on the rolling stock and track were the property of the West Side Flume and Lumber Company, now West Side Lumber Company, and the employees who operated and maintained the road were the employees of the Lumber Company." They point out that their information goes back only as far as 1906 but that "since that date we know of no instance in which the Railroad Company or West Side Lumber Company held itself out to the public as willing to transport for hire either persons or property." At least subsequent to 1906 the Hetch-Hetchy did not accept for movement over its line of railroad, on through billing or otherwise, freight destined to points outside the State of California and did not receive from the Sierra Railway Company, on through billing or otherwise, shipments originating outside the State of California and destined to points on the Hetch-Hetchy's line. The only property carried was that of the West Side Lumber Company. "As above indicated, Hetch-Hetchy and Yosemite Valley Railway Company was for many years merely the vehicle by which title to the right of way was held. West Side Lumber Company, formerly West Side Flume and Lumber Company, owned the track and all rolling equipment, and employed all persons connected with the operation of the road. The road is a plant facility connecting the Company's mill and its logging camp, and, except in the special instance hereinafter mentioned, no property is carried on the road except the property of West Side Lumber Company, and no persons are permitted to ride on the road except employees and agents of the Lumber Company. Since at least 1906 no charge has been made for the transportation of any property or any person. It should be noted, however, that under an agreement with the United States Forest Service, whenever a fire occurs the Company makes available its railroad fire fighting equipment and carries Forest Service employees and their equipment without charge to and from the scene of the fire."

In view of the information set out above, it is my opinion that the Hetch-Hetchy and Yosemite Valley Railway Company was a common carrier by railroad subject to Part I of the Interstate Commerce Act from January 1,

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1901 (the date it is shown to have completed its railroad) to June 30, 1906 (the date of the last circular filed with the Interstate Commerce Commission in which it is shown as a common carrier), but not thereafter. It is clear that it was a common carrier. As indicated above the first circular filed with the Interstate Commerce Commission (June 30, 1901) contains the statement that it was intended for "public business"; the circular for the year 1902 includes the statement that it was a "public road. Principal business private." While the circulars for the years 1903 and 1904 state that it was a "private road" the circulars for 1905 and 1906 contain the statement that it was a "common carrier," although qualified by the statement that its principal business was hauling logs. Its name appears in the Official Guide of Railways from March 1904 to July 1908, showing a connection with the Sierra Railway Company at Tuolumne, California, and that it had "regular schedules for freight." In subsequent issues it appears as "Logging road. No freight or passenger service." In Poor's for the years 1901 through 1906 ownership of a passenger car is shown. That it was engaged in interstate commerce is evidenced by the fact that it had a connection with the Sierra Railway Company. This information appearing in the records of the Interstate Commerce Commission, Poor's Railroads and the Official Guide of Railways is not in conflict with the statements contained in the letter from Pillsbury, Madison & Sutro, but rather it coincides with it.

The Hetch-Hetchy and Yosemite Valley Railway Company was an "employer" under the Railroad Retirement Act from January 1, 1901 to June 30, 1906, and service to it during that period is creditable under that Act. Service to it subsequent to June 30, 1906, is not creditable.

Joseph H. Freehill
General Counsel

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