

MEMORANDUM

L-45-170

M-35

March 27, 1945

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Strouds Creek and Muddlety Railroad Company

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

QUESTION

Has the Strouds Creek and Muddlety Railroad Company ceased to be an "employer" under the Railroad Retirement Act and Railroad Unemployment Insurance Act?

OPINION

It is my opinion that the Strouds Creek and Muddlety Railroad Company has not ceased to be an "employer" under the Railroad Retirement Act or Railroad Unemployment Insurance Act.

DISCUSSION

The Strouds Creek and Muddlety Railroad Company, by virtue of being an operating carrier subject to Part I of the Interstate Commerce Act, has been an "employer" under the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Its name appears under Item No. 6947 in the Status Book with the period of creditable service shown as June 14, 1904 to date.

In a certificate of public convenience and necessity dated March 22, 1944, (Finance Docket No. 14450) the Interstate Commerce Commission authorized the operation under lease by The Baltimore and Ohio Railroad Company of the property of the Strouds Creek and Muddlety Railroad Company. Mr. F. A. Deverell, Assistant Comptroller, The Baltimore and Ohio Railroad Company, in a letter dated November 15, 1944, states that The Baltimore and Ohio Railroad Company took over the operation of the properties of the Strouds Creek and Muddlety Railroad Company on April 1, 1944, and that as of that date the tariffs,

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concurrences and powers of attorney of the Strouds Creek and Muddlety Railroad Company on file with the Interstate Commerce Commission were adopted by The Baltimore and Ohio Railroad Company.

Information in the valuation report of the Interstate Commerce Commission on the Strouds Creek and Muddlety Railroad Company (43 V.R. 637) is that the Strouds Creek and Muddlety Railroad Company was incorporated on June 14, 1904, under the general laws of West Virginia, for the purpose of building a railroad from a point at or near the mouth of Strouds Creek to a point at or near Hookersville, all in the county of Nichols, West Virginia. The report states that the carrier owned and operated with its own organization a standard gauge steam railroad some 8 miles in length.

Under the principles laid down in Central Vermont Transportation Company (B.O. 41-10), a company which has the power under its charter to operate as a common carrier by railroad and whose railroad is operated in interstate commerce under lease or other arrangement by a carrier by railroad subject to Part I of the Interstate Commerce Act, is itself a carrier by railroad subject to Part I of that Act and consequently is an "employer" under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

Since the Strouds Creek and Muddlety Railroad Company operated its railroad with its own organization and, moreover, has been for a great many years a carrier by railroad subject to the Interstate Commerce Act, it is reasonable to conclude that it has the power under its charter to operate as a common carrier by railroad. Cf. Status of Avon, Geneseo & Mount Morris Railroad Company (L-43-390). Therefore, since our information indicates that the railroad has, since April 1, 1944, been operated in interstate commerce under lease by The Baltimore and Ohio Railroad Company, a carrier by railroad subject to Part I of the Interstate Commerce Act, it is my opinion that the Strouds Creek and Muddlety Railroad Company has continued at all times to be a carrier by railroad subject to Part I of the Interstate Commerce Act and consequently an "employer" under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

Myles F. Gibbons  
General Counsel