

Pigent
AUG 27 1952

L 52 515

The Board

Approved by B.O. 52-300 dated 8-27-52

The General Counsel

Request of the Allegheny and South Side Railway Company for
Non-retroactive Coverage Ruling Relieving it From Payment of
Contributions Due Under the Railroad Unemployment Insurance Act

The Allegheny and South Side Railway Company has requested that it be relieved from the payment of contributions due under the Railroad Unemployment Insurance Act in the amount of \$5,186.56, remaining after the transfer of contributions from the State of Pennsylvania and the Bureau of Internal Revenue. Upon consideration of all the facts, I recommend that the Board's coverage ruling of July 30, 1946, L-46-431 on the status of the company be applied without retroactive effect to the extent necessary to relieve the company from the payment of the contributions in question.

From the information in our files it appears that the Board, in accordance with a decision of the Interstate Commerce Commission, Allegheny and South Side Railway Company v. Director General, 62 I.C.C. 248 (1921), originally held on April 17, 1939, L-39-224, that the company was not an employer within the meaning of

Memorandum to The Board

the Railroad Retirement Act.^{1/} Subsequently, in view of certain decisions by the United States Supreme Court, this ruling was reconsidered on July 30, 1946, L-46-431, and it was concluded that the company was an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts. Upon submission of the matter to the Interstate Commerce Commission by the Bureau of Internal Revenue, Division 3 of the Commission held on October 20, 1948, that the company was not a common carrier by railroad subject to the Interstate Commerce Act. Following such decision, the Bureau on November 17, 1948, held that the company did not qualify as an employer within the meaning of the Railroad Retirement ^{Tax} Act and this office on January 19, 1949, L-48-888, likewise withdrew the opinion of July 30, 1946, on the status of the company and recommended that the company not be considered as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts until a final determination of the status of the company.

On February 6, 1950, the full Commission reconsidered the decision of Division 3 and found that the company was a common carrier subject to Part 1 of the Interstate Commerce Act. Accordingly, by L-50-256, there was a reinstatement on April 28, 1950, of General

^{1/} On the same basis the Wage and Hour Division of the United States Department of Labor determined on December 28, 1939, that the company was subject to the Fair Labor Standards Act.

Memorandum to The Board

Counsel's Opinion L-46-431, dated July 30, 1946, holding that the company has been an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts. Similarly, the Bureau of Internal Revenue on August 31, 1950, found that the company was an employer subject to the Railroad Retirement Tax Act, but in view of the circumstances, applied such ruling only from April 1, 1950, so that the company would not be required to pay the additional taxes imposed by the Railroad Retirement Tax Act for any period prior to that date.

At the request of the company an adjustment agreement was negotiated with the State of Pennsylvania and according to information from the office of the Director of Finance, the State of Pennsylvania has transferred to the Board contributions in the sum of \$9,956.84^{2/} which together with \$2,121.29, to be received from the Bureau of Internal Revenue, gives the company a total credit of \$12,078.13 against the liability of \$17,264.69 as of December 31, 1950, leaving a deficit of \$5,186.56. The company has requested relief from the payment of this deficit.

It is clear that the Board possesses the authority to apply its rulings non-retroactively with respect to contributions as

^{2/} The Board reimbursed the State of Pennsylvania for benefits paid in the amount of \$7,697.00

Memorandum to The Board

well as interest due under the Railroad Unemployment Insurance Act, General Counsel's Opinion No. 1942, Admin. 2, approved B.O. 42-177 (1-42-219). In my opinion, the Board should exercise this authority so as to afford the company the relief requested.

It cannot be said that the company's liability for contributions under the Railroad Unemployment Insurance Act was entirely clear, as is shown by the conflicting rulings of the various Federal agencies. It was not until July 30, 1946, that this office ruled the company to be an employer within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts. Indeed, prior to that time the company had been expressly held not to be such an "employer" and it was not unreasonable for the company to continue during that period to pay unemployment contributions to the state. There is no question that the company at all times acted in good faith and was caught in a dilemma not of its own making.

Finally, it should be noted the company has cooperated in arranging an adjustment with the state and the Bureau under which the Board will receive a major portion of the contributions accruing under the Railroad Unemployment Insurance Act during the disputed period.

In view of the foregoing, I recommend that the coverage ruling of July 30, 1946, L-46-431 be applied without retroactive effect to the extent necessary to relieve the company from the payment

Memorandum to The Board

of contributions accruing under the Railroad Unemployment Insurance Act in the amount of \$5,186.56.

An appropriate Board Recommendation is attached.

Hyles F. Gibbons
General Counsel

Attachment

CC: Chief Executive Officer
Director of Fiscal Accounts

BDiamond:sh

THE MEMBERS OF THE BOARD AND SECRETARY OF THE BOARD PREPARE FOUR COPIES. ALL OTHERS PREPARE SIX COPIES.	FORM NO. G-20a (1-51) UNITED STATES OF AMERICA RAILROAD RETIREMENT BOARD BOARD RECOMMENDATION	PAGE 1 OF 1 PAGES	
		DATE OF ACTION 1	
		ACTION TAKEN	
		BECOMES BOARD ORDER NO.	INITIALS OF SECRETARY
EFFECTIVE DATE			

APPROVED BY			
HEAD OF OFFICE, BUREAU, OR REGION	DATE	CHIEF EXECUTIVE OFFICER	DATE
<i>Myles T. Gibson</i> General Counsel	AUG 27 1952		

ORDER APPLYING RULING AS TO THE STATUS OF THE ALLEGHENY AND SOUTH SIDE RAILWAY COMPANY WITHOUT RETROACTIVE EFFECT WITH RESPECT TO INTEREST ON DELINQUENT CONTRIBUTIONS

The opinion and recommendation of the General Counsel contained in his memorandum of August 27, 1952, relative to the claim of the Allegheny and South Side Railway Company for relief from the payment of delinquent contributions are approved. Pursuant to the recommendation therein it is hereby ordered that the ruling of July 30, 1946, L-46-431, holding the Allegheny and South Side Railway Company to be an employer under the Railroad Unemployment Insurance Act be applied without retroactive effect to the extent necessary to relieve the company from the payment of delinquent contributions due under the Railroad Unemployment Insurance Act in the sum of \$5,186.56.