

Digest

APR 30 1945

45-274

The Director of Retirement Claims

The General Counsel

Gulf Lumber Company

[REDACTED]
Service claimed as machinist at Fullerton, Louisiana, from
December 1913 to March 1920

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

QUESTION

Was the Gulf Lumber Company an "employer" under
the Railroad Retirement Act and is service to it
creditable under that Act?

OPINION

It is my opinion that the Gulf Lumber Company was
not an "employer" under the Railroad Retirement
Act and that service to it is not creditable under
that Act.

DISCUSSION

The applicant in connection with his claim states, "The Gulf
Lumber Company from whom I received my pay was not a common carrier,
although the work performed in their shops was principally for 'Gulf
& Sabine Railroad Company' owned by the same company."

From an examination of the valuation report of the Interstate
Commerce Commission on the Gulf & Sabine River Railroad Company (121 V.R.
775), it appears that the Gulf Lumber Company was controlled by the same
interests which controlled the Gulf & Sabine River Railroad Company. The
carrier was abandoned in 1928. Moody's Industrials for the year 1927 shows
the Gulf Lumber Company to have then been in process of liquidation.

Memorandum to
The Director of Retirement Claims

In a letter dated August 27, 1943, Mr. Charles E. Eberle, Assistant Secretary and Treasurer, Gulf Lumber Company, states that the Gulf Lumber Company "cut out its timber holdings at Fullerton, Louisiana some time during the year 1928 and at present there remains no records of this company nor are there any records available in connection with the Gulf and Sabine River Railroad Company," and that the information furnished by him is from his "personal recollection as to the operations of the two companies and my [his] connection with them commenced during the latter part of the year 1926." Mr. Eberle states further that the Gulf Lumber Company (hereinafter sometimes referred to as the "Lumber Company") was incorporated March 4, 1907, in Louisiana for the purpose of cutting certain timber into lumber and marketing it; that it was controlled by the same interests which controlled the Gulf & Sabine River Railroad Company; that the railroad operations conducted by the Lumber Company were confined to the movement of the Lumber Company's own products; that it did not perform rail transportation service for others; that it did not hold itself out to the public as a common carrier by railroad and did not file any reports with the Interstate Commerce Commission; that the Lumber Company furnished the Gulf & Sabine River Railroad Company all of its requirements for ties and lumber products; that the "basis of charge was undoubtedly on market values"; that the percentage of total revenues of the Lumber Company derived from lumber so supplied is "Unknown but very negligible"; that the equipment of both the Lumber Company and the Gulf & Sabine was repaired in the shops of the Lumber Company at Fullerton, Louisiana, and that "any cost attaching to the repairs of the railroad company was charged to it at cost plus a percentage for profit"; that "Separate work orders were put through covering the work done in the Lumber Company shops for its own equipment and also that performed on equipment owned by the Railroad Company"; that "No segregation of the shops was made for the work performed on Railroad Company equipment"; that employees were used interchangeably on work for both the Lumber Company and the Gulf & Sabine; that "My guess is that about 50% of the shop performed on work done for the Railroad Company"; that he does not know what percentage of the total revenues of the Lumber Company was derived from shop work for the Gulf & Sabine but that it "would be negligible"; that no copies of contracts or agreements between the Lumber Company and the Gulf & Sabine are available; and that his recollection is that the shops were "under the supervision of the Lumber Company only."

From the information available it does not appear that the Gulf Lumber Company was an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. While the Gulf Lumber Company was under common control with the Gulf & Sabine River Railroad Company, a carrier by railroad subject to Part I of the Interstate Commerce Act, and while it appears that at least subsequent to some time in 1926 it supplied the Gulf & Sabine River with its requirements for ties and other lumber, Mr. Eberle states that the charge for those products

Memorandum to
The Director of Retirement Claims

"was undoubtedly on market values" and that the revenue of the Lumber Company derived from the products so supplied is "Unknown but very negligible." It appears also that at least subsequent to some time in 1926 the Lumber Company repaired at its shop at Fullerton, Louisiana, the equipment of the Gulf & Sabine River. This equipment repair service is a service in connection with the transportation of passengers or property by railroad, but while Mr. Eberle states from "personal recollection" that his "guess is that about 50% of the shop performed work done for the Railroad Company," the revenue derived from such work compared with total revenues of the Lumber Company was "negligible" and no information at all concerning the operations of the Lumber Company prior to some time in 1926 is available.

Since the information available with respect to the operations of the Gulf Lumber Company does not afford a basis for holding it to have been an express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act, or that it was engaged in substantial services in connection with the transportation of passengers or property by railroad within the meaning of Section 1(a) of the Railroad Retirement Act, it must be held that it was not an "employer" under that Act and that service to it is not creditable.

Myles F. Gibbons
General Counsel

HFC:lr