

FEB 18 1944

The Director of Retirement Claims

The General Counsel

Western Oklahoma Railroad Company

[REDACTED]
Service claimed as pile recorder at Hartshorn, Oklahoma,
from January 1901 to June 1901

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

QUESTION

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

OPINION

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

DISCUSSION

An examination of the valuation report of the Interstate Commerce Commission on the Choctaw, Oklahoma and Gulf Railroad Company (24 V.R. 819-1018) shows that that carrier acquired from the Western Oklahoma Railroad Company on May 1, 1902, a line of railroad 158 miles in length, located within the State of Oklahoma. No other information concerning the Western Oklahoma Railroad Company is given in the valuation report. The name of the company does not appear in Poor's and Moody's manuals or in "Statistics of Railways in the United States."

Information furnished by Mr. D. C. Rees, Superintendent of Employment and Group Insurance, The Chicago, Rock Island and Pacific Railway Company, in a letter dated March 10, 1942, is that the Western Oklahoma Railroad Company was incorporated on December 11, 1900, under

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the laws of the then Territory of Oklahoma; that construction of its railroad was begun in March 1901 and was completed on May 1, 1902, on which latter date all of the property, rights and franchises of the Western Oklahoma Railroad Company were acquired by the Choctaw, Oklahoma and Gulf Railroad Company, and that the line of railroad was not put in operation until some time subsequent to the date it was acquired by the Choctaw, Oklahoma and Gulf Railroad Company. Mr. Rees states further, "the Western Oklahoma was constructed and financed in the interest of the Choctaw, Oklahoma and Gulf Railroad Company. In December, 1900, the last-named made an arrangement with certain bankers to advance construction funds to the Western Oklahoma in consideration of the turnover of \$3,000,000.00 of CO&G Consolidated Mortgage Bonds at an agreed price. On January 15, 1901, the CO&G and the Western Oklahoma entered into an agreement whereunder the CO&G agreed to purchase the completed line of railroad of the Western Oklahoma for a sum equal to actual construction costs plus a commission of 5%."

Since it appears from the foregoing that no portion of the railroad of the Western Oklahoma Railroad Company was put in operation prior to the sale of the property to the Choctaw, Oklahoma and Gulf Railroad Company, it is clear that the Western Oklahoma Railroad Company was not an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. It is equally clear that while it was controlled by a carrier by railroad subject to Part I of the Interstate Commerce Act (Choctaw, Oklahoma and Gulf Railroad Company), it did not perform any service in connection with the transportation of passengers or property by railroad within the meaning of Section 1(a) of the Railroad Retirement Act. Therefore, it is my opinion that the Western Oklahoma Railroad Company was not an "employer" under the Railroad Retirement Act. Furthermore, it is my opinion that since no part of the line (prior to its sale to the Choctaw, Oklahoma and Gulf Railroad Company) was ever put in operation, the Western Oklahoma Railroad Company was not a "predecessor" and service to it is not creditable. See Status of LaSalle Terminal Railway Company, I-43-633; see also Status of The Holly and Swink Railway Company, I-44-17.

Joseph H. Freehill
General Counsel

HFC:lm