

Project
AUG 20 1945

The Director of Retirement Claims

L-45 561

The General Counsel

Gary & Interurban Railway Company
Gary & Interurban Railroad Company
Gary Railways, Inc. (from August 15, 1925 to some time in
1943 known as Gary Railways Company; prior to August 15,
1925, known as Gary Street Railway Company)
(Gary, Indiana)

[REDACTED]
conductor at Valparaiso, Indiana, from February 1912 to
January 1916

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

QUESTION

1. Was the Gary & Interurban Railway Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
2. Was the Gary & Interurban Railroad Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
3. Has the Gary Railways, Inc. (from August 15, 1925 to some time in 1943 known as Gary Railways Company; prior to August 15, 1925, known as Gary Street Railway Company) ever been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and is service to it creditable under either of those Acts?

OPINION

1. It is my opinion that the Gary & Interurban Railway Company was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act.

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2. It is my opinion that the Gary & Interurban Railroad Company was not an "employer" under the Railroad Retirement Act and service to it is not creditable under that Act.
3. It is my opinion that Gary Railways, Inc. (from August 15, 1925 to some time in 1943 known as Gary Railways Company; prior to August 15, 1925, known as Gary Street Railway Company) has never been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it is not creditable under either of those Acts.

DISCUSSION

From information in various editions of Poor's and Moody's manuals and in a letter dated August 12, 1941, from Mr. T. G. Hamilton, Vice President, Gary Railways Company, the following appears:

Gary & Interurban Railway Company

The Gary & Interurban Railway Company was chartered on July 22, 1907, under the laws of the State of Indiana, and owned and operated a standard gauge electric (overhead trolley) railway in and between Gary, Hammond and East Chicago, Indiana. Its railway was entirely on public streets or highways. It handled passengers only. No physical connection with any steam railroad was maintained. It was not operated as a part of any steam-railroad system of transportation. It did not file with the Interstate Commerce Commission any tariffs, concurrences, powers of attorney, annual or other reports. It was not directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad.

Gary & Interurban Railroad Company

The Gary & Interurban Railroad Company was chartered on January 28, 1913, under the laws of Indiana as a consolidation of the Gary & Interurban Railway Company, Gary Connecting Railways Company, Valparaiso & Northern Railway Company and the Goshen, South Bend & Chicago Railroad Company. It owned and operated a line of standard gauge electric (overhead trolley) railway, extending from Hammond to LaPorte, Indiana, passing through East Chicago, Indiana Harbor, Gary, Valparaiso and Chesterton, a distance of about 85 miles. Physical connections were had with the Michigan Central at East Gary and with the Grand Trunk at Valparaiso for the interchange of freight only. Records of the company are not available, but Mr. Hamilton states that the percentage of freight to passenger business was "very small." The manuals show no revenue from freight traffic. The railway was not operated as a part of any steam-railroad system of

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transportation. The company did not file with the Interstate Commerce Commission any tariffs, concurrences, powers of attorney, annual or other reports and was not directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act. In a re-organization in 1917 portions of these properties were acquired by the Gary Street Railway Company, Gary Connecting Railroad Company and Gary & Valparaiso Railway Company.

Gary Railways, Inc.

(From August 15, 1925 to some time in 1943
known as Gary Railways Company; prior to
August 15, 1925, known as Gary Street Rail-
way Company)

Gary Railways, Inc., was incorporated on September 26, 1917, under the laws of Indiana, as the Gary Street Railway Company and purchased the properties originally owned by the Gary & Interurban Railway Company. On August 15, 1925, it purchased the properties of the Gary Connecting Railroad Company, Gary & Valparaiso Railway Company and Gary & Hobart Traction Company and changed its name to Gary Railways Company. In 1943 the name was changed to Gary Railways, Inc. For a number of years it operated, as did its predecessors, electric street railways in Gary, Hammond and vicinity and interurban lines. Electric railway operations have been gradually replaced by bus operations. At the present time it operates approximately 30 miles of street railway in Gary and Hammond, together with bus operations. A physical connection was maintained with the Michigan Central at East Gary, Indiana, but the only freight handled over the connection consisted of 10 carloads of fuel oil per year for one concern. Approximately one-tenth of one per cent of total revenues of the company was derived from freight traffic. Prior to some time in 1932 the company, through control by Midland Utilities, may have been under common control with one or more carriers by railroad subject to part I of the Interstate Commerce Act.

An examination of "Selected Financial and Operating Statistics from Annual Reports of Electric Railways," published by the Interstate Commerce Commission, and "List No. 3 of Corporate Names of Common Carriers Filing Tariffs, Concurrences and Powers of Attorney with the Interstate Commerce Commission and Compiled from its Records" indicates that at least since May 15, 1935, the Gary Railways, Inc., has not had on file with the Interstate Commerce Commission any effective tariffs, concurrences or powers of attorney, and that it has not, at least since 1924, filed with that body any annual reports.

From the foregoing, it appears that neither the Gary & Interurban Railway Company, the Gary & Interurban Railroad Company nor the Gary Railways, Inc., was an express company or sleeping-car company

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subject to part I of the Interstate Commerce Act, and whether or not any of them was a carrier by railroad subject to part I of the Interstate Commerce Act, it appears that, in any event, the railway operated successively by those companies was nothing more than a street, suburban or interurban electric railway within the exception proviso in Section 1(a) of the Acts. Consequently, neither the Gary & Interurban Railway Company nor the Gary & Interurban Railroad Company was an "employer" within the meaning of the Railroad Retirement Act. While Gary Railways, Inc., which conducted some bus operations, may have been for a few years prior to some time in 1932, through control by the Insull interests, under common control with one or more carriers by railroad, there is no showing that, in those bus operations, it performed any services in connection with the transportation of passengers or property by railroad within the meaning of the Railroad Retirement Act. Accordingly, Gary Railways, Inc., has never been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act, and service to it is not creditable under either of those Acts. Since neither the Gary & Interurban Railway Company nor the Gary & Interurban Railroad Company was a "predecessor" of a company which was a "carrier" employer on August 29, 1935, service to either is not creditable.

Hyles F. Gibbons
General Counsel

HPC:lr