

Digest

L-44-369 ✓

JUL 14 1944

Mr. C. H. Knight, President
Knight Live Stock Company, Inc.
209 West Main Street
Morristown, Tennessee

Dear Sir:

I have your letter of May 22, 1944 in which you request advice whether "men employed by regular registered stock yard companies for loading and unloading livestock are covered by your Act [the Railroad Retirement Act]. If so, what is it necessary for them to do to come under your Act?" You inquire also as to the coverage of a "private yard" which "loads and unloads livestock by railroad" without charge, and as to such a yard when it does make a charge.

In general, public stockyard companies which engage in the loading and unloading of livestock carried by railroad in interstate commerce are, by reason of rendering such services, which are required of the railroad as part of "transportation", themselves carriers by railroad subject to the Interstate Commerce Act. Union Stock Yard and Transit Company of Chicago v. United States, 308 U.S. 213 (1939). They are therefore employers under the Railroad Retirement and the Railroad Unemployment Insurance Acts. Upon determination by the General Counsel of the Railroad Retirement Board that a company is an "employer", the Board will send the company full instructions regarding the necessary reports under both Acts and for contributions under the Railroad Unemployment Insurance Act. Pay-roll taxes for employment covered under the Railroad Retirement Act are levied under Subchapter B of Chapter 9 of the Internal Revenue Code and are collected by the Bureau of Internal Revenue.

It is not quite clear to me from your letter what you mean by "private yard", but I may say that if a stockyard performs any transportation service for a railroad in interstate commerce, which service the railroad is required to perform as part of its line-haul transportation service and the stockyard, as a railroad terminal, performs such service as a public calling, it is a common carrier by railroad in interstate commerce. If no charge is made for the performance of the transportation service, it is possible that the stockyard performing such service would not be a carrier for hire and therefore would not be covered as a common carrier by railroad. That

Mr. C. H. Knight, President

question, however, as to a particular case would require further consideration in view of the unlikelihood that such service would be performed without remuneration in some form. It is usual, where such services are performed without a specific charge, that certain privileges, such as the right to sell feed to consignors and consignees of stock loaded and unloaded for feed, water and rest in transit under the 28-hour law, are enjoyed by the stockyard. That would raise the further question whether the yard engaging in such operations is not by reason thereof itself a common carrier by railroad in interstate commerce since services under the 28-hour law are required of the railroad as part of the line haul and the stockyard thus serving the public customers of the railroad might be doing so as a public calling.

In order that the status of your Company may be officially determined, it is requested that you complete the enclosed Form LQ-2-b (revised) and, in addition, if not answered in connection with the questionnaire LQ-2-b (revised), supply the following information with respect to the period from at least as early as August 29, 1935 to the present time, indicating if for any particular period there were differences:

1. (a) Is your Company a public stockyard; that is, is live-stock offered for public sale at your yard?
(b) Is your Company posted as a public stockyard by the Secretary of Agriculture?
2. Describe all tracks, platforms, docks, chutes, pens or other facilities used in the loading or unloading of rail-borne livestock, showing the location of the facilities in relation to any railroad, and who owns and operates such facilities.
3. For each year from 1935 to date please furnish the following figures:
 - (a) Total number of livestock shipped from and received at the stockyard
 - (1) by railroad.
 - (2) by all other means (describing such means).
 - (b) Total annual revenue derived from
 - (1) loading and unloading of livestock for railroads.
 - (2) other operations performed by the Company under its tariffs filed with the Department of Agriculture.

Mr. C. H. Knight, President

- (3) all other services such as feeding, watering, and resting stock in transit by railroad (describing same, itemizing as to those for railroads, shippers, etc.).
- (c) Total number of employees.
- (d) Total number of employees who devoted any time to loading and unloading or other handling of livestock for railroads, stating also the approximate proportion of that time to their total time.

In accordance with your request, I enclose a copy of the Railroad Retirement Act, the coverage provisions of which (contained in section 1(a)) are identical with those of the Railroad Unemployment Insurance Act.

Very truly yours,

Joseph H. Freehill
General Counsel

Enclosures

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