

SEP 18 1945

The Director of Retirement Claims

L-45 640

The General Counsel

Angelina County Lumber Company (of 1890)

San Augustine County Lumber Company

Angelina County Lumber Company

[REDACTED]
[REDACTED] at Keltys, Texas,
from November 1910 to November 1911

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

QUESTION

1. Was the Angelina County Lumber Company (of 1890) an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
2. Was the San Augustine County Lumber Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?
3. Has the Angelina County Lumber 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 Angelina County Lumber Company (of 1890) was not an "employer" under the Railroad Retirement Act, at least subsequent to July 11, 1910, and that service to it, at least subsequent to that date, is not creditable under that Act.

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2. It is my opinion that the San Augustine County Lumber Company was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act.
3. It is my opinion that the Angelina County Lumber 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

An examination of Poor's and Moody's manuals does not reveal the name of the Angelina County Lumber Company or the San Augustine County Lumber Company. From information in the valuation report of the Interstate Commerce Commission on the Angelina & Neches River Railroad Company (108 V.R. 539, 547), it appears that the Angelina County Lumber Company, at least at date of valuation (June 30, 1919), was controlled by the same individuals who controlled the Angelina & Neches River Railroad Company.

Mr. E. L. Kurth, Vice President and General Manager, Angelina & Neches River Railroad Company, in letters dated June 4, 1945, August 7, 1945, and August 17, 1945,^{2/} states that the Angelina County Lumber Company was incorporated in September 1890 under the laws of the State of Texas, "with the purpose of manufacture and sale of lumber and other essentials thereto"; that on October 2, 1916, the San Augustine County Lumber Company succeeded to the operations of the Angelina County Lumber Company (of 1890); that the latter company was dissolved on January 1, 1923; and that on January 1, 1923, the San Augustine County Lumber Company was succeeded by the "new" Angelina County Lumber Company. He states that the information furnished by him with respect to the operations of the Angelina County Lumber Company (of 1890) applies to both the San Augustine County Lumber Company and the "new" Angelina County Lumber Company. Therefore, the three companies in question are hereinafter sometimes referred to collectively as the "Lumber Company." From the information furnished by Mr. Kurth the following appears: The Lumber Company does not have the power under its charter to operate as a

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- 1/ The Angelina & Neches River Railroad Company is a "carrier" employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. Its name appears under Item No. 179 in the Employer Status List with the period of creditable service shown as August 23, 1900 to date.
 - 2/ Mr. Kurth states that due to the lack of records for the period prior to July 11, 1910, the information furnished does not apply (except as indicated) to the period prior to that date.

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common carrier by railroad; the Lumber Company has not at any time performed any railroad operations "although they did from time to time construct and own tram lines for handling their log trains out of the woods, but such tram line operation was only in connection with their sawmill operations and they did not perform rail transportation for others"; the Lumber Company has not filed with the Interstate Commerce Commission, or any other regulatory body, any tariffs, concurrences, powers of attorney, annual or other reports and has not held itself out to the public as a common carrier by railroad; the four principal stockholders of the Lumber Company have been also the four principal stockholders of the Angelina & Neches River Railroad Company; the Lumber Company has supplied to the Angelina & Neches River some lumber or other products, but such products have been sold on a straight commercial basis and the percentage of total revenues of the Lumber Company derived from the sale of such products is "infinitesimal"; "possibly some minor services" such as, for instance, maintenance of way and structures or maintenance of equipment have been performed by the Lumber Company for the Angelina & Neches River, but the percentage of total revenues of the Lumber Company derived from the performance of such services is "infinitesimal." The Lumber Company has operated its log trains over the rails of the Angelina & Neches River under a trackage agreement (copy submitted) dated July 11, 1910, and still in effect. The agreement limits the use of the carrier's rails to the operation of the Lumber Company's trains for the purpose of hauling the Lumber Company's logs and equipment. The agreement contains the usual clause to the effect that the log trains of the Lumber Company, and the crew, while running over the rails of the carrier, shall be subject to all the rules and regulations of the carrier.

An examination of "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 Lumber Company has not had in effect with the Interstate Commerce Commission any tariffs, concurrences or powers of attorney.

It is clear from the foregoing that the Lumber Company, at least subsequent to July 11, 1910, has not been an express company, sleeping-car company or carrier by railroad, its railroad being nothing more than a private logging road. While it is indicated that the Lumber Company has been under common control, within the meaning of the Railroad Retirement Act, with the Angelina & Neches River (a carrier by railroad subject to part I of the Interstate Commerce Act) it appears from the information available that at least subsequent to July 11, 1910, the Lumber Company, which apparently has been engaged in the general lumber business, has at most performed only "casual" services in connection with the transportation

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of passengers or property by railroad. Accordingly, it is my opinion that the Lumber Company, at least since July 11, 1910, has never been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it, at least since July 11, 1910, is not creditable under either of those Acts.

Myles F. Gibbons
General Counsel

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