

DEC 22 1953

L 53-641

Approved by B.O.53-327 dated 12-29-53

The Board

The General Counsel

Muncie National Stockyards, Inc.

Application of coverage ruling without retroactive effect
with respect to contributions due under the Railroad
Unemployment Insurance Act

The Director of Fiscal Accounts, by memorandum dated March 31, 1953, has recommended that the above-named company be relieved from the payment of contributions due under the Railroad Unemployment Insurance Act for the period July 1, 1939 through December 31, 1951. Upon consideration of all the facts it is my opinion that the Board, pursuant to its authority under Section 8(h) of the Railroad Unemployment Insurance Act and Section 3791(b) of the Internal Revenue Code, should apply the coverage ruling in this case without retroactive effect with respect to contributions for the period in question.

It appears from the information in the files that the Bureau of Internal Revenue on August 29, 1942 held the company to be an employer within the meaning of the Carriers Taxing Act of 1937 to the extent of its rail-borne livestock loading and unloading activities. A formal opinion was issued by this office on June 30, 1952 (L-52-401) holding that the company was, at least since January 1, 1937, an employer within the meaning of the Railroad Retirement and Railroad Unemployment Insurance

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Acts, with respect only to its rail-borne livestock loading and unloading operations. The Director of Fiscal Accounts advises that the contributions for the period from July 1, 1939 through December 31, 1951 amount to only \$190.38, and that, presumably, taxes due under the Federal Unemployment Tax Act and the State Unemployment Insurance Act for the same period have been paid to the Bureau of Internal Revenue and the State of Indiana, respectively. The company has paid the Board contributions due for the year 1952.

It is clear that the Board possesses authority to apply its rulings non-retroactively with respect to contributions. General Counsel's Opinions L-42-219; L-44-474; L-46-683; and L-53-71. In my opinion this case presents certain equities which warrant the exercise of this authority.

It should be noted that the difficult segregation problem involved in stockyard company cases has long delayed resolution of coverage in that field. Apparently, the company acted in good faith and paid the taxes due under the State Unemployment Insurance Act. To proceed against the company at this time might impose an undue hardship by compelling the company to pay contributions twice for the same employment, if, as appears likely, it has not filed timely claims for refund with the state. And, the small amount of contributions involved together with the possibility that benefit payments by the state may have exceeded taxes collected in the period in question makes it inadvisable to attempt to secure an adjustment agreement with the state since the only result of such an agreement may be a net loss to the Board.

In view of the foregoing, it is my opinion that the ruling of June 30, 1952, should be applied without retroactive effect to the extent

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of relieving the Kansas National Stockyards, Inc. from the payment of contributions accruing from July 1, 1939 through December 31, 1951. An appropriate Board Recommendation is attached.

Hyles F. Gibbons
General Counsel

Attachment

CC: Mrs. Linkins
Mr. McKenna
Director of Fiscal Accounts
General Auditor
Director of Wage and Service Records

EDrvk

THE MEMBERS OF THE BOARD AND SECRETARY OF THE BOARD PREPARE FOUR COPIES. ALL OTHERS PREPARE SIX COPIES.	FORM NO. G-20a (1-51) UNITED STATES OF AMERICA RAILROAD RETIREMENT BOARD BOARD RECOMMENDATION	PAGE 1 OF PAGES	
		DATE OF ACTION	
		ACTION TAKEN	
		BECOMES BOARD ORDER NO	INITIALS OF SECRETARY
EFFECTIVE DATE			
APPROVED BY			
HEAD OF OFFICE, BUREAU, OR REGION <i>Myles F. Gibson</i>	DATE 12-22-53	CHIEF EXECUTIVE OFFICER	DATE
The General Counsel ORDER APPLYING RULING AS TO CREDITABILITY OF CERTAIN SERVICES PERFORMED FOR THE MUNCIE NATIONAL STOCKYARDS, INC. WITHOUT RETROACTIVE EFFECT WITH RESPECT TO CONTRIBUTIONS ACCRUED FOR THE PERIOD JULY 1, 1939 THROUGH DECEMBER 31, 1951 The opinion and recommendation of the General Counsel contained in his memorandum of December 22, 1953 relative to the relief of the Muncie National Stockyards, Inc. from the payment of contributions under the Railroad Unemployment Insurance Act are approved and adopted. Pursuant to the recommendation therein, it is hereby ordered that the ruling of June 30, 1952, L-52-401, holding the Muncie National Stockyards, Inc. to be an employer under the Railroad Unemployment Insurance Act with respect to certain of its activities, shall be applied without retroactive effect to the extent of relieving the Company from the payment of contributions which had accrued during the period July 1, 1939 through December 31, 1951.			