

August 12, 1938

L-38-791

Mr. F. L. McCaffery, General Auditor
Inter-California Railway Company
65 Market Street
San Francisco, California

Dear Sir:

Thank you for your letter of March 8, 1938, furnishing the Board information relative to the status under the Railroad Retirement Act of the Inter-California Railway Company.

Our information shows that the Inter-California Railway Company was incorporated in California on June 15, 1904, for the purpose of engaging in interstate commerce by railroad; and that with the exception of directors' qualifying shares all the stock of the Inter-California Railway Company is owned by the Southern Pacific Company. The Inter-California Railway Company is, therefore, a company controlled by a carrier by railroad subject to part I of the Interstate Commerce Act within the meaning of the Railroad Retirement Act.

Our information reveals that prior to May 31, 1935, the Inter-California Railway Company owned lines of railroad both in the United States and Mexico; the lines in the United States, consisting of two main and two branch lines, were operated until May 31, 1935, by the Southern Pacific Company under lease as a part of the latter company's general transportation system. Of the two main lines, one extended from Niland, California, to the International Boundary at Callexico and the other from Araz Junction, California, to the International Boundary at Cantu. At the International Boundary at Callexico and Cantu, respectively, direct connections were made with the line of railroad owned by the Inter-California in Mexico. In all, it appears that the Inter-California Railway Company owned but did not operate about 85 miles of railroad in the United States prior to May 31, 1935, when all the physical property of the Inter-California Railway Company situated in the United States became the property of the Southern Pacific Company.

In addition to the railroad lines formerly owned by the Inter-California Railway Company in the United States our information shows that the Inter-California Railway Company at the present time owns and operates approximately 51 miles of railroad located entirely in Mexico. In operating over this line of railroad located entirely within the territorial limits of Mexico but extending to the International Boundary, the Inter-California Railway serves as a direct and important connecting link in the railroad transportation system of the Southern Pacific Railroad in handling both freight and passenger traffic originating in the United States, as well as in Mexico, en route to and from Los Angeles and other California termini. Although it appears that the lines of the Inter-California are now located entirely within Mexico, as indicated above, you state that certain employees of the Inter-California Railway Company render service to it within the territorial limits of the United States in the handling of shipments to and from Mexico through the Customs offices and in addition take care of certain other details incident to trans-shipments across the International Boundary. The service thus performed by the Inter-California Railway Company through these employees working for it within the United States is directly related to transportation by the Southern Pacific Railroad and is, therefore, a service in connection with transportation by railroad within the contemplation of the Railroad Retirement Act.

Upon the basis of the foregoing considerations it is my opinion that the Inter-California Railway Company is a company controlled by a carrier by

railroad subject to part I of the Interstate Commerce Act and engaged in performing a service in connection with transportation by railroad and is, therefore, an "employer" within the meaning of the Railroad Retirement Act. However, since it appears that the principal part of the business of the Inter-California Railway is performed outside of the United States, only such compensation as is earned by individuals rendering service to the Inter-California Railway Company within the United States should be reported to the Board.

In view of the information already furnished by you it will be unnecessary to execute our questionnaire Form LQ-1.

Very truly yours,

Lester P. Schoene
General Counsel