

Digest

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The Director of Retirement Claims

The General Counsel

Indiantown & Southern Railway Company

Service claimed as section laborer and section foreman at Indiantown, Michigan, from September 1913 to December 1917

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

QUESTION

Was the Indiantown & Southern Railway Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?

OPINION

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

DISCUSSION

The Indiantown & Southern Railway Company does not appear in Poor's or Moody's manuals or "Statistics of Railways in the United States." On the basis of the applicant's statements that the Indiantown & Southern Railway Company "connected with the Chicago and North Western Railway Company at Indiantown, hauling logs for the Chicago and North Western which were made into track shims" and that it was "considered an interstate railroad," this office communicated with the Chicago and North Western Railway Company and in letters dated October 28, 1944, and November 16, 1944, Mr. W. R. Kettenring, Auditor of Disbursements of that carrier, states that the so-called Indiantown & Southern Railway Company was a "private logging road" originally built in 1905 by Albert Heath, and extended from Indiantown, Michigan, in a southerly direction to a mill owned by Heath; that the carrier, under an agreement dated October 5, 1904, leased to Heath the rails, fastenings, etc., necessary for the

Memorandum to
The Director of Retirement Claims

construction of a "logging Railroad to reach the mill of the lessee." Mr. Kettenring submitted a copy of the agreement. He states that at subsequent periods this same track material with some additional material was leased to the Mashek Lumber Company (and Albert Heath), Mashek Lumber Company and Escanaba Manufacturing Company, under agreements dated August 22, 1906, August 22, 1909, and February 1, 1915, respectively; that the railroad was "merely a private track over which material from the Timber Company was delivered to our station at Indiantown, which is a prepaid station on the C. & N. W. Ry. between Wilson and Bark River, Mich."; that an examination of the carrier's records fails to locate any "interline traffic settlements" with the Indiantown & Southern; that "The only settlements that might be called towns on this line of track were Heath's Mill and Gourley, Mich."; that the Indiantown & Southern did not serve any industries other than the three consecutive owners; that it was a "private logging line owned and operated by Albert Heath"; that the track material was returned prior to September 18, 1917, "at which time the so-called Indiantown & Southern Ry. went out of existence."

In response to certain questions propounded in our letter to him of November 29, 1944, Mr. W. J. Anthony, a former officer or employee of the Escanaba Manufacturing Company (which company is no longer in existence), furnished information to the effect that the operations of the so-called Indiantown & Southern were confined exclusively to the movement of the owners' own products and other freight; that the Indiantown & Southern did not hold itself out to the public as a common carrier by railroad; that it is his opinion that it was "merely a private logging road"; and that the Escanaba Manufacturing Company was not affiliated in any way, through stock ownership or otherwise, with any express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act.

It does not appear from the foregoing that the so-called Indiantown & Southern Railway Company was an express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act. Therefore, in the absence of any information tending to show that it was owned or controlled by or under common control with any such express company, sleeping-car company or carrier by railroad, it is my opinion that the Indiantown & Southern Railway Company was not an "employer" under the Railroad Retirement Act. Since available information does not indicate that the railroad of the Indiantown & Southern was acquired by a company which was a "carrier employer" on August 29, 1935, and since in any event it does not appear to have been at any time a common carrier, the Indiantown & Southern Railway Company was not a "predecessor" within the meaning of Sections 1(f) and 202 of the act approved June 24, 1937, and service to it is not creditable.

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General Counsel