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JUL 25 1947

The Director of Retirement Claims

L-47 595

The General Counsel

Poteau & Cavanal Mountain Railroad Company



We find no record of a company under the title "Poteau and Cavanaugh Railroad" and it is suggested that Mr. [REDACTED] may have reference to the Poteau & Cavanal Mountain Railroad Company, which operated a line of railroad between Poteau and Witteville, Oklahoma. Therefore, in response to your request of July 1, 1947, I herewith submit my opinion on the following:

QUESTION

Is service rendered to the Poteau & Cavanal Mountain Railroad Company creditable under the Railroad Retirement Act?

OPINION

It is my opinion that the company was not an "employer" under the Railroad Retirement Act and that service rendered to it is not creditable under that Act.

DISCUSSION

From information in Acquisition of Line by Poteau & Cavanal Mountain Railroad Company, 82 I.C.C. 270 (decided September 11, 1923), it appears that the company was organized on February 24, 1923, under the laws of the State of Oklahoma for the purpose of acquiring and operating a line of railroad extending from a connection with the Frisco at Poteau to a point at or near Witteville, Oklahoma, a distance of 3.5 miles. The line was formerly owned by the Fort Smith, Poteau & Western

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Railroad Company and operated by it in interstate commerce.* The Fort Smith, Poteau & Western's traffic consisted principally of the output of certain coal mines at or near Witteville. In 1918 the coal traffic ceased because operation of the mines was suspended. After that date bricks in carload lots were handled by horsepower over that part of the line between the junction point with the Frisco and a brick yard, a distance of .75 mile. It did not operate after January 1, 1919. On August 31, 1922, the railroad was purchased by Mr. D. J. Evans and the Poteau & Cavanal Mountain proposed to acquire the line from Evans for \$60,000 par value in capital stock. In its application the Poteau & Cavanal Mountain reported that two veins of high grade semi-anthracite coal cropped in benches on Cavanal Mountain and that capital was being enlisted on a sufficient scale to insure permanency of future operations. Evans controlled the coal mining company and the railroad and was negotiating with financial interests to take over the coal mining property and acquired interest in the railroad. In a certificate dated September 11, 1923, the Commission authorized the acquisition and operation of the line. Apparently the venture was not successful.

According to "Statistics of Railways in the United States" the Poteau & Cavanal Mountain filed circulars with the Interstate Commerce Commission for the years 1923, 1924 and 1925, indicating that it owned 3.40 miles of road and that it was not in operation. The issues of 1926 through 1930 show the same mileage owned and contain the statement that the company was not in operation but that the information was received through "unofficial" sources. In the 1931 issue it is stated that the road had been dismantled. Information in the "Alphabetical List of Corporate Names of Carriers and Other Companies Considered in Connection with Valuation Work Under Section 19A of the Interstate Commerce Act," is that the Poteau & Cavanal Mountain did not conduct any operations and that valuation was suspended by the director's letter to the carrier dated April 11, 1928.

Since it appears from the foregoing that the railroad of the Poteau & Cavanal Mountain was not put in operation, it is my opinion that the company was not an "employer" within the meaning of the Railroad Retirement Act and that service rendered to it is not creditable under that Act. Cf. General Counsel's Opinion re status of Western Oklahoma Railroad Company, I-44-96.

HPC:lr

Hyles F. Gibbons
General Counsel

*Fort Smith, Poteau & Western Railroad Company was a "carrier-employer" from December 24, 1915 to January 1, 1919. See Employer Status List Item No. 2426.