

equal

L 59-151

Chief Administrative Analyst

APR 28 1959

The General Counsel

Penalty Mail

This is in reply to your memorandum of April 21, 1959, attaching a copy of a memorandum dated April 10, 1959 from the Regional Director at Atlanta in which he states that the Auditor-Payrolls, Southern Railway Company, has inquired whether the Board will furnish him 40,000 window envelopes for the purpose of mailing Forms BA-6 to individual employees. You inquire whether, in view of the requirement of Section 250.5 of the Board's Regulations that each employer shall transmit to its employees an annual statement, prepared by the Board and forwarded to such employer, of the service months and compensation credited to such employee on the records of the Board, the employer may be furnished penalty envelopes for such transmission. (Section 250.5 was issued pursuant to Section 8 of the Railroad Retirement Act.)

The applicable regulations of the Post Office Department are found in 39 CFR 27.2(a)(1) and (c)(1), which read in pertinent part as follows:

"§27.2 Penalty mail--(a) Description.

Penalty mail is official mail sent without prepayment of postage bearing a printed clause citing the penalty for private use instead of postage stamps. The following kinds of mail may be sent as penalty mail by those authorized to use this privilege:

"(1) Official mail relating exclusively to the business of the Government of the United States mailed by officers of the executive and judicial branches of the Government. . . ."

* * * * *

"(c) Restrictions of use. The use of markings authorized on official mail as shown in paragraph (b) of this section may not be placed on other mail to avoid payment of postage or registry fee. The following restrictions apply to the use of envelopes, cards, labels, and tags bearing the penalty statement:

Memorandum to Chief Administrative Analyst

"(1) Any department or office authorized to use the penalty privilege may furnish self-addressed penalty envelopes or labels to persons or concerns for their convenience in submitting official information desired by any U. S. Government department or agency. Reply envelopes may not be furnished to bidders or contractors, or to enable private persons or concerns to send free reports or other information which they are required by law to make." (Underscoring supplied.)

39 CFR 27.2(c)(1) appears to be the present version of 39 CFR 37.17(a) which read as follows:

"§37.17 Use of penalty envelopes and labels--(a) Restrictions. Correspondence of persons not officers writing to the executive departments or to officers of the United States concerning the business of the writers with the Government shall not be accepted for mailing free in penalty envelopes. Officers authorized to use such envelopes shall not furnish them for use to bidders, or to enable private persons or concerns to send free reports, etc., which they are required by law to make." (Underscoring supplied.)

The provision in 39 CFR 27.2(a)(1) was relied on by the Third Assistant Postmaster General in denying the Board permission (later reversed for reasons not applicable here) to furnish penalty envelopes to carriers to enable them to forward free of postage Forms BA-6 to former employees. See letter dated January 28, 1947 from the Third Assistant Postmaster General to Mr. H. O. Lytle, Chief of Supply and Service, Railroad Retirement Board.

There is little doubt that under 39 CFR 37.17(a) the Board would have been prevented from furnishing the penalty envelopes requested by the Southern Railway Company, since the Railway Company is required by the Board's Regulations to transmit Forms BA-6 to its employees. See in this connection letter dated January 28, 1947, from the Third Assistant Postmaster General to Mr. H. O. Lytle, Chief of Supply and Service, Railroad Retirement Board and compare letter dated January 5, 1955, from the Assistant Postmaster General to Mr. Howard W. Habermeyer, Director, Bureau of Wage and Service Records, Railroad Retirement Board. The second sentence in 39 CFR 27.2(c)(1) is not as broad as the second sentence in 39 CFR 37.17(a), the former sentence referring to reply envelopes and the latter to penalty envelopes generally. The request by the Southern Railway Company does not contemplate any information being sent to the Board but rather embraces information to be sent to its employees. Notwithstanding this distinction, however, it would seem to follow that since the employers cannot use penalty envelopes to send to the Board information which they are required by the Board's Regulations to furnish the Board, they likewise cannot use penalty

Memorandum to the Chief Administrative Analyst

envelopes to transmit to their employees Forms BA-6 when such transmission is required by the Board's Regulations.

Accordingly, it is my opinion that the Board is not authorized to furnish penalty envelopes to the Southern Railway Company as requested by its Auditor-Payrolls.

Myles F. Gibbons
General Counsel

CC: Director of Wage and Service Records

LT:shb