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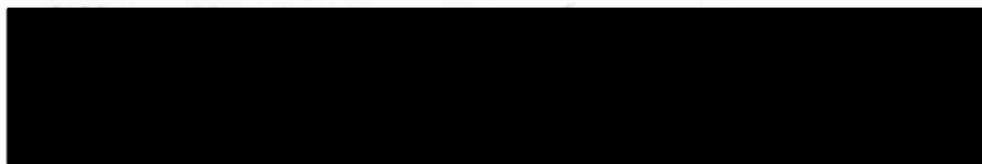
FEB 27 1945

The Director of Retirement Claims

L-45. 107.1

The General Counsel

Toledo, Bowling Green & Southern Traction Company ✓
Toledo Urban & Interurban Railway Company ✓



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

QUESTION

1. Is service rendered to the Toledo, Bowling Green & Southern Traction Company prior to January 1, 1910, creditable under the Railroad Retirement Act?
2. Is service to the Toledo Urban & Interurban Railway Company creditable under the Railroad Retirement Act?

OPINION

1. It is my opinion that the Toledo, Bowling Green & Southern Traction Company was an "employer" under the Railroad Retirement Act from July 1908 to and including December 31, 1909.
2. It is my opinion that the Toledo Urban & Interurban Railway Company was an "employer" under the Railroad Retirement Act from January 1, 1905 to July 1908.

DISCUSSION

The Toledo, Bowling Green & Southern Traction Company (operating an electric line) has been held to have been an "employer" under the Railroad Retirement Act from January 1, 1910 (the effective date of its first freight tariff filed with the Interstate Commerce Commission) to October 1,

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1930 (the date it discontinued operations). Its name appears under Item No. 7221 in the Status Book.

Since, as will be shown later on in this memorandum, the properties of the Toledo, Bowling Green & Southern Traction Company were operated under lease by the Toledo Urban & Interurban Railway Company during the period January 1, 1905, to some time in July 1908, the creditability of this applicant's service (August 4, 1901 to December 31, 1906) depends upon the status of the Toledo, Bowling Green & Southern Traction Company from August 4, 1901 to January 1, 1905, and upon the status of the Toledo Urban & Interurban Railway Company from January 1, 1905 to December 31, 1906. However, this opinion will cover the status of the Toledo, Bowling Green & Southern Traction Company from the date of its incorporation (April 16, 1901) to January 1, 1910, and the status of the Toledo Urban & Interurban Railway Company during its entire existence (some time in 1904 to August 23, 1909).

The Toledo, Bowling Green & Southern Traction Company was incorporated on April 16, 1901, as a consolidation of the Toledo, Bowling Green & Fremont Railway Company, the Findlay Street Railway Company and the Hancock Light & Power Company. Following its incorporation it acquired the following lines of standard gauge electric railway: Toledo to Trombley and Jerry, Ohio, formerly the line of the Toledo, Bowling Green & Fremont, 34.5 miles; Findlay to Mortimer, Ohio, formerly owned by the Findlay Street Railway Company, 12 miles. A gap between Trombley and Mortimer, 13.5 miles, was completed on February 15, 1902, thus completing the line between Toledo, Ohio and Findlay, Ohio, approximately 60 miles. (Poor's Railroads - Street Railway Section - 1903). It operated this line until January 1, 1905, when it was leased to the Toledo Urban & Interurban Railway Company.

The Toledo, Bowling Green & Southern Traction Company's first annual report to the Interstate Commerce Commission (electric railways were not required by the Commission to file reports prior to 1908) covered the period ended June 30, 1910. Its first freight tariff filed with the Interstate Commerce Commission was effective January 1, 1910. None of its concurrences or powers of attorney on file with the Commission was effective prior to January 1, 1910. The revenues of the Toledo, Bowling Green & Southern Traction Company prior to the lease of its properties to the Toledo Urban & Interurban (January 1, 1905), as reported in Poor's Railroads, are not broken down, and no revenues are reported for the year 1908 to and including 1909.

Information in Poor's and Moody's manuals is that the Toledo Urban & Interurban Railway Company was chartered in 1904 under the laws of Ohio and built a line of standard gauge electric railway from Toledo, Ohio to a point near Perrysburg, Ohio, about 11 miles, where it connected

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with the Toledo, Bowling Green & Southern Traction Company. The manual for the year 1904 states that it was being built to furnish an inlet to the city for several interurban roads and to do switching for a number of factories to the Toledo Belt and the Toledo, St. Louis & Western. On January 1, 1905, it leased the properties of the Toledo, Bowling Green & Southern Traction Company. It defaulted on its rental payment for April 1908 and in July 1908 the lease was cancelled and the Toledo, Bowling Green & Southern Traction Company resumed the operation of its properties, together with the line of the Toledo Urban & Interurban Railway Company. The Toledo, Bowling Green & Southern Traction Company acquired title to the property of the Toledo Urban & Interurban Railway Company on August 23, 1909.

An examination of the records of the Interstate Commerce Commission does not indicate that the Toledo Urban & Interurban Railway Company filed with that Commission any annual reports or circulars, but it did file 38 freight tariffs; the earliest effective date of any of these documents was that of its I.C.C. No. 1, January 1, 1907. These tariffs, or at least a number of them, were adopted by the Toledo, Bowling Green & Southern Traction Company as of January 1, 1910. It filed also a number of freight concurrences and powers of attorney; the earliest effective date of any of these filings is shown as December 23, 1907; all were revoked or cancelled as of August 1, 1911. It has no "A" file at the Commission. It does not appear to have been a party to any proceedings before the Commission. In the Official Railway Equipment Register, under the Toledo Terminal Railroad Company (a carrier by railroad subject to Part I of the Interstate Commerce Act) or its predecessor, Toledo Railway & Terminal Company, connection is shown with the Toledo Urban & Interurban Railway Company at Kerper, Ohio. The same connection is shown in the Official Guide of Railways.

The only revenues of the company shown in the manuals are those for the years ended December 31, 1905, and December 31, 1906, which are reported as follows:

	<u>1905</u>	<u>1906</u>
Passenger	\$231,204	\$262,237
Freight	17,906	24,883
Percent of freight to passenger revenues	7.7%	9.1%

In view of all the foregoing, it is my opinion that the Toledo, Urban & Interurban Railway Company from January 1, 1905 to July 1908 and the Toledo, Bowling Green & Southern Traction Company from July 1908 to January 1, 1910, were carriers by railroad subject to Part I of the Interstate Commerce Act and that during the entire period January 1, 1905 to

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January 1, 1910, the railway operated successively by those companies was more than a street, suburban or interurban electric railway. This mileage is the same mileage operated by the Toledo, Bowling Green & Southern Traction Company subsequent to January 1, 1910, and the same steam connection (originating with the Toledo Urban & Interurban) is shown all the way through. The revenue from freight traffic for the year ended June 30, 1910, was 13.68 per cent of that derived from passenger traffic. While there is no information available with respect to freight revenues of the Toledo Urban & Interurban for the year 1907 and for the first half of 1908, nor for the Toledo, Bowling Green & Southern for the period from July 1, 1908 to June 30, 1909, it is reasonable to conclude that the ratio would be not less than that for the calendar years 1905 and 1906 (7.7% and 9.1% respectively). Furthermore, although the earliest effective date of any of its interstate freight tariffs was January 1, 1907, it is reasonable to conclude in view of the fact that from the beginning of its operations the Toledo Urban & Interurban Railway had physical connection with the Toledo Terminal Railroad or its predecessor, that it was engaged in the transportation of freight in interstate commerce.

In summary, the Toledo Urban & Interurban Railway Company was an "employer" under the Railroad Retirement Act from January 1, 1905 to July 1908 and the Toledo, Bowling Green & Southern Traction Company was such an employer from July 1908 to and including December 31, 1909. The information outlined above with respect to the operations of the Toledo Urban & Interurban Railway Company prior to January 1, 1905 and with respect to the operations of the Toledo, Bowling Green & Southern Traction Company prior to July 1908, and which includes all the available information with respect to those periods, is not sufficient to provide a basis for holding that service to the Toledo Urban & Interurban Railway Company prior to January 1, 1905, or to the Toledo, Bowling Green & Southern Traction Company prior to July 1908 is creditable.

Myles F. Gibbons
General Counsel

HFC:lr