

MEMORANDUM

L-44-509

M-312

August 31, 1944

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Oklahoma Railway Company

I herewith submit my opinion on the following:

QUESTION

Has the Oklahoma Railway Company ceased to be an "employer" under the Railroad Retirement Act and Railroad Unemployment Insurance Act and, if so, on what date?

OPINION

It is my opinion that on August 16, 1944, the Oklahoma Railway Company ceased to be an "employer" under the Railroad Retirement Act and Railroad Unemployment Insurance Act and that service to it on and after that date is not creditable under those Acts.

DISCUSSION

In a certificate of public convenience and necessity dated May 17, 1944, and effective 40 days from that date, the Interstate Commerce Commission authorized the trustees of the Oklahoma Railway Company to abandon certain portions of its lines in Oklahoma, Canadian, Logan and Cleveland Counties, Oklahoma, such abandonment to be contingent upon "commencement of operations by the purchasers of the lines involved." Oklahoma Railway Company Trustees Abandonment of Operation (Finance Docket 14221). In the same certificate the Commission authorized the joint purchase of the lines of the Oklahoma Railway Company in and around Oklahoma City, Oklahoma, by The Atchison, Topeka and Santa Fe Railway Company and the trustees of The Chicago, Rock Island and Pacific Railway Company, the joint purchase by those carriers of the rights of the Oklahoma Railway Company under its agreement with the Oklahoma City Junction Railway Company, the joint acquisition of

Memorandum to The Director
of Retirement Claims

trackage rights over a portion of the Oklahoma Railway's Walker Street line, the acquisition by the two carriers of trackage rights over portions of the lines of each other in Oklahoma City, the purchase by The Atchison, Topeka and Santa Fe Railway Company of 1.1 mile of line in Guthrie, Oklahoma, and the purchase by the trustees of The Chicago, Rock Island and Pacific Railway Company of .28 mile of track in El Reno, Oklahoma, and approximately 1 mile of Olie Street and East Yard tracks in Oklahoma City. Atchison, Topeka and Santa Fe Railway Company et al Purchases Etc. (Finance Docket No. 14229). The report by Division 4 of the Commission contains the following statement: "* * * if the transactions are consummated, the Oklahoma will become an intrastate interurban carrier engaged in passenger operations only, and as such will not be subject to our jurisdiction, * * *."

A letter dated June 26, 1944, from Mr. Charles Hoopes, Secretary-Auditor, Oklahoma Railway Company, in reference to the abandonment and purchase authorized in the certificate issued by the Commission and described above, contains the following statements:

"It is contemplated that the purchaser will take over the freight facilities of the Oklahoma Railway Company, on or about August 1, 1944, and thereupon all of trustees' tariffs for the movement of freight will be cancelled and no freight of any kind will be transported by the trustees, and the only business which the trustees will be engaged in, will be the transportation of passengers in intrastate commerce.

"It is the opinion of our legal department, that upon the consummation of the sale, and the abandonment of freight movement by the Oklahoma Company, that neither the properties of the company, nor the trustees, will be any longer subject to the Railroad Retirement Act, the Railroad Unemployment Insurance Act and the Carriers' Taxing Act of 1937.

"As provided by the regulations under the Railroad Retirement and Taxing Acts, you will be notified upon the cessation of freight operations, and in order that there may be no confusion as to the reporting of compensation of employees and the taxes under these acts, we would appreciate it if you will advise us if there is any further step or steps, the trustees should take to completely relieve themselves from the obligation to comply with these acts, or future liability under said acts or any of them."

In a letter dated August 16, 1944, Mr. Hoopes states that the "Oklahoma Railway Company, Robt. K. Johnston and A. C. DeBolt,

Memorandum to The Director
of Retirement Claims

Trustees, abandoned all freight service over the lines of the Oklahoma Railway Company, midnight, August 15, 1944"; that "All freight tariffs were cancelled effective on that date and the company is no longer engaged in the freight business in any respect. It has sold and transferred to The Atchison, Topeka and Santa Fe Railway Company and The Chicago, Rock Island and Pacific Railway Company, its freight facilities at Oklahoma City, Guthrie and El Reno. It has terminated as of the above date, its contract with the Switchmen's Union of North America which represented the employees engaged in freight and switching service, and its contract with the Brotherhood Railway Carmen of America, which represented the freight car inspectors. It has no interline passenger or express tariffs, either state or interstate, and its passenger business will be wholly intrastate."

It appears from the foregoing that on August 16, 1944, the Oklahoma Railway Company ceased to be a carrier by railroad subject to Part I of the Interstate Commerce Act but, in any event, it is my opinion that since August 15, 1944, the railway operated by it has been nothing more than a street, suburban or interurban electric railway within the exemption proviso in Section 1(a) of the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Therefore, the Oklahoma Railway Company has not, since August 15, 1944, been an "employer" under those Acts and service to it subsequent to that date is not creditable.

Joseph H. Freehill
General Counsel