

Tariff
Powers of Attorney
Concurrences
Carrier Connections
Commercial Railroad

April 7, 1937

L-37-194
1-37-194

Mr. Latimer

Mr. Schreiber

The creditability of service under the Railroad Retirement Act of 1935 to the Kansas City, Kaw Valley and Western Railway Company, from December 12, 1914 to September 30, 1927; and to the Kansas City, Kaw Valley and Western Railroad Company, from October 1, 1927 to date.

The Kansas City, Kaw Valley and Western Railroad Company (hereinafter called the Railroad Company) is the successor to the Kansas City, Kaw Valley and Western Railway Company (hereinafter called the Railway Company). The two companies are treated in one opinion for the reason that the operations of both are similar, and the principles upon which this opinion is based are applicable to both companies.

The Railway Company was incorporated on July 28, 1909, in the state of Kansas, and operated as an electric railway from July 1, 1914 to September 30, 1927, at which time it was succeeded by the Railroad Company which has been operated from that time to date. The Railway Company's mileage was increased from 26.30, as reported in 1915, to 54.85, in 1927; and from that time the Railroad Company has operated substantially the latter mileage until 1935 when its operated mileage decreased to 42.49 miles. The two companies, in succession, have filed with the Interstate Commerce Commission annual reports covering the periods since July 1, 1914, freight tariffs since December 12, 1914, passenger tariffs since June 20, 1916, freight powers of attorney since August 18, 1915, freight concurrences since September 10, 1915, and passenger powers of attorney since September 24, 1923. The Railway Company filed one passenger concurrence March 8, 1923. Locomotive inspection reports have been filed since February, 1927. The attached Summaries of Factual Investigation disclose that the two companies have maintained connections with steam railroads at least from September, 1915, at various points of interchange, and that throughout their existence the freight and switching revenues have steadily increased from over 11 per cent of the transportation revenues to over 77 per cent. The amount of such freight and switching revenues indicates that these companies had the characteristics of commercial railroads.

The cases cited in the attached summaries show that the Interstate Commerce Commission has considered these companies more than street, interurban or suburban electric railways, and subject to its jurisdiction. The companies have at all times considered themselves to be railroads (electrically operated) and not within the exemption proviso of Section 1 (a) of the Railroad Retirement Act.

I am, therefore, of the opinion that the Kansas City, Kaw Valley and Western Railway Company was more than a street, interurban or suburban electric railway within the meaning of the exemption proviso of Section 1(a) of the Railroad Retirement Act; that it was a commercial electric railway from December 12, 1914 to September 30, 1927, and that service rendered to it during that period is creditable towards annuities under the Act; that the Kansas City, Kaw Valley and Western Railroad Company is a commercial railroad, and is more than a street, interurban or suburban electric railroad within the meaning of the exemption proviso of Section 1(a) of the Act, and that service rendered to it from October 1, 1927 to date is creditable towards annuities under the Act.

The opinion expressed in this memorandum is based on the attached Summaries of Factual Investigation prepared at the Interstate Commerce Commission under the supervision of Mr. Edwin E. Ferguson of the Legal Staff, and concurs with the conclusions of Mrs. Mary B. Linkins, also of the Legal Staff.