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JAN 24 1947

The Director of Retirement Claims

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The General Counsel

Hayts Corners, Ovid & Willard Rail Road Company
Commonly known as the "Willard Branch" of the
Lehigh Valley

In response to your request of December 11, 1944, I herewith submit my opinion on the following:

QUESTION

Is compensation received from the State of New York by engine and train crews of the Lehigh Valley, operating over the so-called Willard Branch of the Lehigh Valley between Hayts Corners, New York, on the main line of the Lehigh Valley, to and into the property of the Willard State Hospital, creditable under the Railroad Retirement Act?

OPINION

It is my opinion that such compensation is creditable under the Railroad Retirement Act.

DISCUSSION

The so-called "Willard Branch" consisted of two lines of railroad, one extending from Hayts Corners on the main line of the Lehigh Valley through the Village of Ovid to the east property line of the Willard State Hospital at a point 0.9 mile west of Ovid, the other extending from the east property line of the Willard State Hospital grounds to a station called Willard, located on the hospital grounds. The line from Hayts Corners to the hospital grounds is owned by the Lehigh Valley, the right of way, grading, etc., being the property of the Hayts Corners, Ovid & Willard Rail Road Company, which "has no corporate organization" and "has not had for many years." The line on the hospital grounds is owned by the State of New York. The entire branch (including the portion owned by the carrier and that owned by the State of New York) was operated by the Lehigh Valley or its predecessor from some time in 1894 to June 30, 1936, under a contract dated February 16, 1894, between the trustees of the hospital and the Lehigh

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Valley. On the latter date the state "abandoned" the trackage on the hospital property and the Lehigh Valley discontinued all service on the Willard Branch except the switching of carload freight between Hayts Corners and Ovid. This contract provided that the Lehigh Valley would continue to operate its railway and in addition would "operate such railway so owned by said state as may be required by such Hospital for its service." The hospital was to furnish the locomotive, all repairs thereto to be borne equally by both parties. The Lehigh Valley was to furnish and keep in repair the combination car and freight cars. Each party was to pay "one half the expenses of operating said road and branches, except repairs, as heretofore." The Lehigh Valley was to "provide for and do the local freight work between Hayt's Corners and Ovid not using the engine so to be provided by said party of the first part [hospital] at its own expense, the party of the first part not sharing such expense." The Lehigh Valley was "to take all charges and passenger earnings on the line other than the state business proper; this latter to be free except the passenger business; that to pay the regular tolls, which go to the party of the second part [Lehigh Valley]." The "operating of the road" was to "include all service necessary to carry passengers to and from the Hospital, and the carrying and distribution of all freight and supplies of the Hospital."

Information furnished by Mr. D. J. Kerr, President, Lehigh Valley Railroad Company, in a letter dated June 25, 1937, is that under the contract dated February 16, 1894, and "operating the State's locomotive" four first-class trains were operated daily, except Sunday, between Hayts Corners and Willard. Two were operated on Sundays only. Two second-class trains were operated daily, except Sunday, between Hayts Corners and Ovid. The members of the crews of these trains were carried on the Lehigh Valley pay roll for 50% of their services. In addition to the operation of the trains mentioned, the crew also moved freight from the main line at Gilbert into the hospital. It also performed switching service on the hospital grounds incident to placing cars of inbound freight at various buildings comprising the institution and removing empties. It handled a number of small supply cars which the hospital owned, moving these cars between the various hospital buildings for the purpose of disposing of the institution's garbage, refuse, etc. Approximately one-third of the total time the crew was on duty was devoted to this "private service" and approximately two-thirds for common carrier service. The Lehigh Valley collected the revenues accruing from the transportation of passengers and all charges for freight billed to the hospital and on freight, if any, billed from the hospital to outside points. No charges were made for placing of inbound cars or removing empties or for handling the "supply cars" referred to above. Mr. Kerr states that the crew was "entirely under the jurisdiction of the hospital authorities in all operations on the hospital property." However, in a

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letter dated November 28, 1944, from Mr. A. F. Bayfield, then Comptroller, Lehigh Valley, he states that the crews "were under the supervision of Division Superintendent * * *."

On the basis of the foregoing information, it is my opinion that the compensation received from the State of New York by the train crews operating over the so-called "Willard Branch" of the Lehigh Valley, during the period 1924-1932, is creditable under the Railroad Retirement Act. Only a minor portion (approximately one-third) of their time was devoted to the so-called "private service"; they were Lehigh Valley crews and irrespective of Mr. Kerr's statement to the contrary, it is reasonable to conclude that the crews in all of their work were subject to the continuing authority of the division superintendent of the carrier to supervise and direct them in the manner of doing their work.

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General Counsel

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