

DEC 18 1945

The Director of Retirement Claims

The General Counsel

L-45 801

G. W. Sheldon & Company
(19 Rector Street, New York, New York)

Service claimed as clerk-bookkeeper at New York, New York, from January 1926 to December 1929

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

QUESTION

Has G. W. Sheldon & Company ever been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and is service to it creditable under either of those Acts?

OPINION

It is my opinion that G. W. Sheldon & Company has never been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it is not creditable under either of those Acts.

DISCUSSION

The name of G. W. Sheldon & Company does not appear in Poor's or Moody's manuals. Information furnished by Mr. P. J. Coughlin, Secretary and General Counsel, National Carloading Corporation, in letters dated July 15, 1942 and January 28, 1944, is that G. W. Sheldon & Company was organized on September 9, 1905, under the laws of the State of Illinois; that it was engaged in business as a freight forwarder; that during the latter part of 1929 it was "acquired through purchase by the National Freight Company" [predecessor of National Carloading Corporation]; that "Thereafter, and continuously since, G. W. Sheldon & Company ceased to function and discontinued all operations"; that "Since that time it has

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employed no employees and only its corporate existence has been maintained"; and that records in its (National Carloading's) possession indicate that prior to December 1929 G. W. Sheldon & Company was not owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad. The opinion in Lehigh Valley Railroad Company v. United States, 243 U.S. 444 (1917), described the George W. Sheldon Company as "an Illinois corporation engaged in forwarding, or bringing goods for importers from the place of purchase in Europe to their destination in the United States and charging the importers for the transportation and such other services as it may perform." The opinion discloses also that the company, "by arrangement with the appellant [the Lehigh Valley], so far as it is able to send the goods over the appellant's line and for so doing receives from it a varying percentage upon the published rates and also a salary of \$5,000 a year," and further that the company "in the performance of the services for which it is paid, maintains offices here and abroad, advertises the Railroad, solicits traffic for it, does various other useful things, and, in short, we assume, benefits the road and earns its money, if it were allowable to earn money in that way." The Court held that the company was not engaged in "transportation service" within the meaning of the Interstate Commerce Act and affirmed a decree enjoining the Railroad against making further payments to the company for the services described.

Since from the foregoing it appears that G. W. Sheldon & Company prior to discontinuance of operations in 1929 was engaged in the freight forwarding business and has never been an express company, sleeping-car company or carrier by railroad, and since our information shows that prior to its discontinuance of all operations in 1929 it was not owned or controlled by or under common control with any such company or carrier, it is my opinion that G. W. Sheldon & Company has never been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that service to it is not creditable under either of those Acts.

Myles F. Gibbons
General Counsel

WPC:lr