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November 27, 1953

L 53-580

The Board

The General Counsel

New England Freight Handling Company

At least as early as 1938, the Board concluded that workmen engaged in service under contracts between the New England Freight Handling Company and its predecessors (hereafter sometimes referred to individually or collectively as the "New England Company") and the New York Central and Hudson River Railroad Company and its successor, the New York Central Railroad Company (hereafter sometimes referred to collectively or individually as the "New York Central") covering the handling of freight at the latter's East Boston, Massachusetts docks, were the employees of the New York Central within the meaning of the Railroad Retirement Act. Several annuities were awarded as a result of the ruling. The Bureau of Internal Revenue agreed with the Board that the services were within the identical coverage provisions of the Carriers Taxing Act, but on the basis that the New England Company by reason of the railroad contracts was itself an "employer" as a controlled company engaged in the performance of services in connection with the transportation of property by railroad.

The New England Company brought suit to recover taxes paid under the Carriers Taxing Act, and on June 12, 1940 the United States

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District Court, Massachusetts, ruled that it was not an employer under the Carriers Taxing Act, and indicated that the individuals working under the contracts were not the employees of the New York Central.

New England Freight Handling Company v. Hassett, 33 F. Supp. 610.

Since there was no actual decision on the second point, the Board restated its position in August 1940 and awaited further clarification of the matter in other cases expected to arise in the courts. Neither the New England Company nor the New York Central has since complied with the requirements of the Railroad Retirement Act or the Carriers Taxing Act (now the Railroad Retirement Tax Act).

In view of the foregoing and the court decisions in Pennsylvania Railroad v. United States, 70 F. Supp. 595; Martin v. Federal Security Agency, 174 F. (2d) 364; Reynolds v. Northern Pacific Railway Company, 168 F. (2d) 934, cert. denied, 335 U.S. 828; Nicholas v. Denver and Rio Grande Western Railroad Company, 195 F. (2d) 428, and Kelm v. Chicago, St. Paul, Minneapolis and Omaha Railway Company, 104 F. Supp. 745, affirmed O.C.A. 8th No. 14710, August 10, 1953, I recommend that the Board rule that the New England Company has not been an employer within the meaning of the Railroad Retirement Act or the Railroad Unemployment Insurance Act and that the workmen engaged in the performance of services under the contracts in question have not been the employees of the New York Central within the meaning of those Acts.

The suggested action is largely purely formal, as credit for the service in question has not been allowed for several years;

The Board

it seems advisable, however, for the Board to act in this matter since the original coverage ruling itself involved Board action.

Myles F. Gibbons  
General Counsel

CC: Colonel Kelly  
Mr. Squire  
Mr. Harper  
Mrs. Linkins  
Mr. McKenna  
Director of Employment and Claims  
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HPCrosby:dmc

REVOKING BOARD ORDERS OF NOVEMBER 16, 1938 AND AUGUST 7, 1940 WITH  
RESPECT TO SERVICE RENDERED IN FREIGHT HANDLING WORK FOR CARRIER  
LESSEES OF THE BOSTON AND ALBANY RAILROAD

The recommendation of the general counsel, contained in his memorandum of November 27, 1953, is adopted, and in accordance therewith, the Board Orders of November 16, 1938 and August 7, 1940; identifying creditable service rendered in the performance of freight handling work for carrier lessees of the Boston and Albany Railroad are revoked and the Board finds as follows:

That neither Edward S. Booth, William S. Booth, Inc., Portland Freight Handling Company nor the New England Freight Handling Company has been an employer within the meaning of the Railroad Retirement Act or the Railroad Unemployment Insurance Act, and that compensated service rendered by individuals engaged in the performance of the freight handling contract in effect on and after May 28, 1906, to and including February 1, 1931, between Edward S. Booth and the carrier lessees of the Boston and Albany Railroad (the New York Central and Hudson River Railroad Company, 1899 to December 22, 1914; the New York Central

Railroad Company, December 23, 1914, to date), and that in effect on and after February 2, 1931, to date, between William S. Booth, Inc., and the New York Central Railroad Company, as lessee of the Boston and Albany Railroad (which latter contract has been performed by the Portland Freight Handling Company from November 15, 1932, to November 25, 1933, and by the New England Freight Handling Company from November 26, 1933, to date) is not creditable as service to the respective carrier lessees of the Boston and Albany Railroad, for purposes of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

HPC/dmc