

AUG 31 1945

1-45-595

The Director of Retirement Claims

The General Counsel

Cowell Portland Cement Company
(Cowell, California)

[REDACTED]
California,
from October 1933 to December 1933

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

QUESTION

Has the Cowell Portland Cement Company ever been an "employer" under 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 the Cowell Portland Cement Company has never been an "employer" under 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

An examination of Poor's and Moody's Industrials does not reveal the name of the Cowell Portland Cement Company. Information furnished by Mr. M. H. Bresee, Secretary, Bay Point and Clayton Railroad Company, (a "carrier" employer under the Acts) in letters dated March 19, 1941, and August 13, 1945, is that the Cowell Portland Cement Company was incorporated on April 10, 1907, under the laws of the State of California; that the primary purpose of the company is to manufacture cement; that the Cowell Portland Cement Company, the Henry Cowell Lime & Cement Company (which latter company handles the sale of cement produced by the Cowell Portland Cement

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Company) and the Bay Point and Clayton Railroad Company are and have been controlled by the Cowell family; that Cowell Portland Cement Company owns a line of standard gauge railroad extending from the quarries of the company to the cement factory, a distance of about one mile; that the railroad operations of the Cowell Portland Cement Company are confined exclusively to hauling raw materials or other goods of the Cowell Portland Cement Company; that the Cowell Portland Cement Company does not hold itself out to the public as a common carrier by railroad; that the Cowell Portland Cement Company supplies to the Bay Point and Clayton Railroad Company all the products used by that carrier in its operations; that these products are supplied at cost; that the Cowell Portland Cement Company does, at cost, all the repair work to cars and equipment of the Railroad Company; that at the present time only one locomotive is used in the railroad operations of the two companies; that the Cowell Portland Cement Company "pays the payroll" of the Railroad Company; and that the entire expenditure of the Cement Company for account of the Railroad Company is less than five per cent of the total revenues of the Cement Company.

It is clear from the foregoing that the Cowell Portland Cement Company has never been an express company, sleeping-car company or carrier by railroad. While it is and has been under common control with a carrier by railroad subject to part I of the Interstate Commerce Act and while at least some of the services it has performed for the carrier are of the type which have been held to be services in connection with the transportation of passengers or property by railroad within the meaning of the Acts, it is clear that they have been so insubstantial as to fall within the term "casual." Accordingly, it is my opinion that the Cowell Portland Cement Company has never been an "employer" under 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

HPC:lr