

M E M O R A N D U M

L-44-514
M-317

August 31, 1944

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Conway Company
 Conway Lumber Company

[REDACTED]
Service claimed as locomotive engineer at Conway, New
Hampshire, from October 1906 to July 1916

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

QUESTION

Was the Conway Lumber Company an "employer" under
the Railroad Retirement Act and if so, between
what dates?

OPINION

It is my opinion that the Conway Lumber Company
was not an "employer" under the Railroad Retirement
Act and that service rendered to it is not
creditable under that Act.

DISCUSSION

The name of Conway Lumber Company (originally known as Conway
Company) does not appear in "Statistics of Railways in the United States"
or in any of Poor's or Moody's manuals.

Information furnished by Mr. A. C. Vining, former Assistant
Superintendent of the Conway Lumber Company, is that the Lumber Company
was incorporated in 1906 under the laws of the State of Maine as the
Conway Company, for the purpose of operating timber lands and saw mills;
that its name was subsequently changed to Conway Lumber Company; that
the company discontinued operations in 1920; that its railroad was dis-
mantled and the equipment sold and that the company was dissolved in
1925; that the company operated three logging railroads known as Saco
River, Rocky Branch and East Branch; that its operations "were

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confined largely to movement of own logs and freight to it's store-houses"; "any service for others as transporters of freight for contractors or hauling logs for other operators was done by contract"; that the company did not hold itself out to the public as a common carrier by railroad; that it did not file with the Interstate Commerce Commission any tariffs, concurrences, powers of attorney, annual or other reports; and finally that it "was not owned or controlled by any other company subject to Part I of the Interstate Commerce Act."

With his letter dated September 21, 1942, Mr. W. P. Reeves, Comptroller and Treasurer, Maine Central Railroad Company, enclosed a copy of an agreement dated July 1, 1907, between the Lumber Company, the Boston and Maine Railroad and the Maine Central Railroad Company. This agreement provided for the construction by the Lumber Company of a line of railroad extending from a connection with the Maine Central near that carrier's so-called Glen Station, New Hampshire, in a northerly direction up Rocky Branch, a distance of about 11 miles. The agreement provided also that the carriers were to furnish the motive power, trucks and trainmen for the transportation of logs from points on the proposed line of railroad to the yard of the company at Conway Station on the Boston and Maine. The Lumber Company agreed to pay the carriers at a specified rate per thousand feet of logs so transported and as rental for the trucks interest at the rate of 10 per cent on the value of the trucks. Concerning operations under this agreement Mr. Reeves states that: "Information in our file indicates that the Maine Central went in a certain distance on this railroad of the Conway Company and picked up the trains which had been assembled at that point; the Conway Company had an engine or engines of its own which apparently picked up the logs, or other lumber, from points where it was cut and brought it down to the point where the Maine Central Railroad received it and transported it to Conway. There is no indication that the Conway Company was given any right to operate over the line of the Maine Central, their operation being in the nature of intra-plant switching and not a line-haul service." Mr. Reeves states further that there is a memorandum in his file dated October 30, 1913, which reads: "That this Company (i.e. Maine Central Railroad) will furnish and place at the cutting-up mill on Rocky Branch Railroad box cars to receive pulpwood and handle by its own trains to and from this point, for which service allowance in freight rate has been provided for. That the Conway Lumber Company will not come with their trains or engine this side of the proposed siding, Maine Central to operate that section of the Rocky Branch Railroad between its tracks at Glen and siding at cutting-up mill."

From the foregoing it appears that the railroad operations conducted by the Lumber Company were confined to "plant facility" or

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"logging road" operations and that the portion of the trackage covered by the agreement referred to above was in the nature of an industrial siding. The former assistant superintendent of the Lumber Company states that the operations were confined largely to the movement of the Lumber Company's own logs and freight; that any service for others was on a contract basis, and that the Lumber Company did not hold itself out to the public as a common carrier by railroad. Since, therefore, it was not an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act and since there is no evidence that it was controlled by or under common control with any such express company, sleeping-car company or carrier by railroad, it is my opinion that the Conway Lumber Company (originally incorporated as Conway Company) was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act.

Joseph H. Freehill
General Counsel