

MEMORANDUM

L-45-365

M-88

June 1, 1945

TO: The Director of Retirement Claims

FROM: The General Counsel

SUBJECT: Little Wolf River Lumber Company (Manawa, Wisconsin)

[REDACTED]
Service claimed as section foreman at Manawa, Wisconsin,
from January 1, 1924 to December 31, 1931

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

QUESTION

Has the Little Wolf River Lumber 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 Little Wolf River
Lumber 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 manuals does not dis-
close the name of the Little Wolf River Lumber Company.

Information furnished by Mr. Kneale Lindsay, Little Wolf
River Lumber Company (hereinafter sometimes referred to as the "Lumber
Company"), with a letter dated May 11, 1945, is that the Lumber Company
was incorporated on February 16, 1892, "with the purpose in mind of
Wholesaleing and Retailing Lumber and Lumber products, operating a Saw-
mill and shipping Lumber," and that it does not have the power under
its charter to operate as a common carrier by railroad; that the site

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of the Lumber Company yard and sawmill "was and is approximately three quarters of a mile from the main line of the Green Bay & Western railroad, reached by a sidetrack maintained for many many years by the Lumber Company, and its employees"; that "As Sawmill operations decreased and were finally eliminated the use of the track was solely used for incoming shipments. Maintenance of which was born by the Lumber Company"; and that "Finally an agreement was reached between the Green Bay and Western Railroad and the Lumber Company, wherein the Railroad took over complete control and maintenance of the afore mentioned track"; that the Lumber Company has never conducted any railroad operations, and has never held itself out to the public as a common carrier by railroad; that in addition to its own plant, two other industries are served by the trackage in question; that the Lumber Company has never directly or indirectly owned or controlled any voting securities of an express company, sleeping-car company or carrier by railroad; that neither the Lumber Company's record of security holders nor any other record or source of information indicates any direct or indirect ownership of the Lumber Company's voting securities by an express company, sleeping-car company or carrier by railroad; that no officer or director of the Lumber Company has ever been an officer or director of any express company, sleeping-car company or carrier by railroad; that neither the Lumber Company's record of security holders nor any other record or source of information indicates the direct or indirect ownership of the Lumber Company's voting securities by any person or company who or which also directly or indirectly owns the voting securities of an express company, sleeping-car company or carrier by railroad; and that the Lumber Company has never sold a major part of its products or services under a contract with one customer which is an express company, sleeping-car company or carrier by railroad or under a contract with one group of customers who are under common control with an express company, sleeping-car company or carrier by railroad.

Mr. H. E. McGee, President, Green Bay and Western Railroad Company, with a letter dated March 2, 1945, has submitted copies of agreements between the Lumber Company and the carrier, these agreements bearing dates December 1, 1939, December 18, 1939, December 18, 1939, September 1, 1943, and September 1, 1943. These agreements show the following: The Lumber Company, which had charged the industries served by the trackage in question "rental" at the rate of \$2.00 per car, desired to "quit claim" its right, title and interest in the trackage to the Green Bay and Western Railroad Company (hereinafter sometimes referred to as the "Railroad Company") and thus be relieved of the expense of maintaining the trackage; the Railroad Company was "unwilling at this time [December 1, 1939] to assume the

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burden of ownership and cost of maintenance" whereupon it was agreed that the Railroad Company would "continue" to operate over the trackage and serve the Lumber Company and the other industries and would maintain the tracks, but the Lumber Company would continue to charge the other industries \$2.00 per car and turn over to the Railroad Company the rental thus collected. It was further agreed that at any time the Railroad Company was willing to assume the burden of ownership and entire cost of maintenance the Lumber Company would deed the trackage to the Railroad Company. Piece by piece, from time to time, the trackage was deeded to the Railroad Company.

Obviously, the Lumber Company has never been an express company or sleeping-car company. Moreover from the foregoing it appears that the Lumber Company does not have the power under its charter to operate as a common carrier by railroad, has never held itself out to public as such, and that it never conducted any railroad operations, the rental of \$2.00 per car which it collected from the other industries on its tracks being merely a trackage charge. It is clear, therefore, that it has never been a carrier by railroad. Accordingly and since the information furnished by the Lumber Company is to the effect that it has never been owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad, it is my opinion that it 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 those Acts.

Myles F. Gibbons
General Counsel