

APR 1 - 1953

E 53-119

The Director of Wage and Service Records

The General Counsel

Empire Ice Company

-

In Form G-215 dated March 30, 1953 you requested a ruling on the question whether or not service of the above-mentioned individual to the Empire Ice Company as laborer (car icer) at Niagara Falls, Ontario, during the period February 15, 1922 to July 1925 was employee service. The question is answered in the negative.

It appears that this service may have been rendered under a contract dated November 22, 1921 between the New York Central and the Empire State Ice Company, Inc.

Information furnished by the successor to the Empire Ice Company is to the effect that it was not owned or controlled by or under common control with the New York Central; that it was engaged in manufacturing and selling ice in the Buffalo territory; that most of the ice was sold to the New York Central or the Merchants Despatch Transportation Company delivered into bunkers of refrigerator cars or in carload lots but that some was sold commercially.

Briefly, the contract provided for the construction by Empire, at its own cost and expense, of a plant at East Buffalo, New York for the manufacture and storage and distribution of ice and for icing, re-icing, salting and ventilating refrigerator cars and facilities at Gardenville and Suspension Bridge for icing and re-icing of refrigerator cars, all on land leased from the New York Central. The New York Central agreed to pay so much per ton of ice delivered, the price to include all services. In all essential respects the contract is very much like contracts between the Atchison and the Valley Ice Company, service under which was held in General Counsel's Opinion L-45-646 not to be "employee" service.

Accordingly, and since it does not appear that the Empire Ice Company was controlled by or under common control with any "carrier", it is concluded that the service in question was not employee service within the meaning of the Railroad Retirement Act.

[REDACTED]
General Counsel

CC: Director of Retirement Claims

HFC/dmc