

MEMORANDUM

L-44-582

M-360

September 23, 1944

TO The Director of Retirement Claims

FROM The Acting General Counsel

SUBJECT S. O. Shaffer

[REDACTED]
Service claimed in "unloading and checking cars" at foot of East South Water Street, Chicago, Illinois, from May 1912 to January 1927, under a contract with the Illinois Central Railroad Company

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

QUESTION

Is service under a contract, dated March 1, 1928, (and a verbal arrangement in effect from some time in 1912), between S. O. Shaffer and the Illinois Central Railroad Company, covering the unloading and transferring of perishable and other freight at the carrier's South Water Street Terminal, Chicago, Illinois, creditable under the Railroad Retirement Act and Railroad Unemployment Insurance Act?

OPINION

It is my opinion that such service is creditable under the Railroad Retirement Act and so far as applicable the Railroad Unemployment Insurance Act as service to the Illinois Central Railroad Company.

DISCUSSION

From available information it appears that from some time in 1912 to March 1, 1928, Mr. S. O. Shaffer, under a verbal arrangement with the Illinois Central Railroad Company, performed services in connection with the unloading and transferring of perishable and

other freight at the carrier's South Water Street Terminal. On March 1, 1928, the arrangement was embodied in a formal agreement reading as follows:

"WHEREAS, the Contractor performs for the Railroad Company at its South Water Street Terminal, Chicago, certain services in connection with the unloading and transferring of perishable and other freight, under a verbal arrangement which it is desired to embody in a formal agreement:

"NOW, THEREFORE, It is mutually agreed by and between the parties hereto as follows:

"1. The Contractor shall perform the following services for the Railroad Company at its South Water Street Terminal, Chicago:

- "(a) Unload, handle, check, at the Fruit Platform, the contents of so-called 'Granger Cars' of fruits and vegetables.
- "(b) Transfer freight shipments from one car to another or others.
- "(c) Collect false floors and load same into cars.
- "(d) Perform any similar work requested by the General Foreman, or other authorized representative of the Railroad Company.

"2. For the services hereinabove specified the Railroad Company shall pay to the Contractor, and the Contractor shall accept as full compensation therefor, the following sums:

"For handling the contents of Granger Cars - $53\frac{1}{2}$ ¢ per ton.

"For all other work hereinbefore mentioned - $50\frac{1}{2}$ ¢ per hour.

All work shall be performed at the request and under the supervision of the General Foreman, or other authorized representative, of the Railroad Company, who, with the cooperation of the Contractor, shall keep a record of the work performed by the Contractor's forces and the compensation due the Contractor therefor.

"3. The Contractor agrees to indemnify the Railroad Company and save it harmless from any and all liability for death of or injury to employees of the Contractor while engaged in said work

or while on the premises of the Railroad Company going to, returning from, or in connection with said work, regardless of whether or not such death or injury may be caused by the negligence of the Railroad Company or the Railroad Company's employees,

"4. The Contractor further agrees, upon the execution of this instrument, to procure and submit to the Railroad Company policy, or policies, of Employers Liability Insurance which shall be satisfactory to the Railroad Company in respect to the terms, provisions, and amount thereof and the company, or companies, issuing same. Such policy, or policies, shall be kept in force continuously and the premiums thereon paid regularly by the Contractor so long as this contract shall remain in effect, and certified copies of said policies shall be filed with the Railroad Company.

"5. This agreement may be terminated by either party upon the expiration of fifteen (15) days written notice given the other party of its desire so to do."

It is my opinion that the service of individuals employed under the formal agreement was rendered subject to the continuing authority of the Illinois Central Railroad Company to supervise and direct them in the manner of doing their work and that therefore they were "employees" within the meaning of the Railroad Retirement Act of that carrier. The work was done on the premises of the carrier; it was of a continuing nature and was integrated with the usual and customary functions of the carrier; and, most important, the agreement provided specifically that "All work shall be performed at the request and under the supervision of the General Foreman, or other authorized representative, of the Railroad Company." It is also worthy of note that while Mr. R. E. Connolly, Pension Department, Illinois Central Railroad Company, in a letter dated May 26, 1942, stated that Shaffer handled work for other carriers and "had the right to tell Mr. [redacted] [the applicant] what work he was to do, when to do his work, how to do his work and to supervise Mr. [redacted] in the manner of rendition of his service," he (Mr. Connolly) in the same letter referred to Shaffer as a "labor agent who supplied labor to unload fruit and vegetables at our South Water Street Terminal." We are informed that the contract is still in effect "although it has not been operative since November 1943 because of the inability of Mr. Shaffer to perform the services covered by the contract."

Since the agreement sets out that previously the services had been performed "under a verbal arrangement which it is desired to embody in a formal agreement," it is reasonable to conclude that the service of individuals under the verbal arrangement was likewise

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performed subject to the continuing authority of the carrier to supervise and direct them in the manner of performing it. Cf. John J. McDonald - Contract with the Chicago, St. Paul, Minneapolis and Omaha Railway Company (L-44-358).

In summary, service to Mr. S. O. Shafter under the verbal arrangement and formal contract described in this memorandum is creditable under the Railroad Retirement Act, and so far as applicable the Railroad Unemployment Insurance Act, from any date in 1912 which can be verified to at least November 1, 1943, as service to the Illinois Central Railroad Company.

David B. Schreiber
Acting General Counsel