

Digest

APR 24 1945

L-45-250.1

The Director of Retirement Claims

The General Counsel

Brink's, Incorporated
Brink's Chicago City Express Company

[REDACTED] Illinois,
from 1879 to 1891 and from March 1, 1917 to June 1918

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

QUESTION

1. Has Brink's, Incorporated ever been an "employer" under the Railroad Retirement Act or Railroad Unemployment Insurance Act and is service to it creditable under those Acts?
2. Was Brink's Chicago City Express Company an "employer" under the Railroad Retirement Act and is service to it creditable under that Act?

OPINION

1. It is my opinion that Brink's, Incorporated has never been an "employer" under the Railroad Retirement Act or Railroad Unemployment Insurance Act and that service to it is not creditable under those Acts.
2. It is my opinion that Brink's Chicago City Express Company was not an "employer" under the Railroad Retirement Act and that service to it is not creditable under that Act.

DISCUSSION

Information in Moody's Industrials is that Brink's, Incorporated was incorporated on May 16, 1919, as Brink's Chicago City Express Company, successor to a company of the same name which had been incorporated in 1879;

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that its name was changed in 1920 to Brink's Express Company and again changed on January 29, 1934, to its present title. It is said to be engaged in the "collection, the transportation in armored cars and the safeguarding of money, securities and valuables."

Information furnished by Mr. Eugene E. Murphy, Secretary, Brink's, Incorporated, in a letter dated January 23, 1945, is to the effect that "Both companies [Brink's, Incorporated and its predecessor, Brink's Chicago City Express Company] engaged in a local parcel and baggage delivery service"; that "In addition the successor company [Brink's, Incorporated] rendered armored car service in a separate division of the company known as the 'Banking Division'"; that "Neither company at any time conducted an 'Express' business over the lines of any carrier"; that "their business was merely service rendered in the local transportation of parcels and baggage"; that neither company filed with the Interstate Commerce Commission any tariffs, concurrences, powers of attorney, annual or other reports; that neither company has ever directly or indirectly owned or controlled any voting securities of an express company, sleeping-car company or carrier by railroad; that neither company's record of security holders nor any other record or source of information indicates any direct or indirect ownership of either company's voting securities by an express company, sleeping-car company or carrier by railroad; that neither company's record of security holders nor any other record or source of information indicates any direct or indirect ownership of either company's voting securities by a person or company who or which also directly or indirectly owned the voting securities of an express company, sleeping-car company or carrier by railroad; and that "One J. H. Bradley who was a Director and President of Brink's Chicago City Express Company from September 9, 1886 to April 11, 1919, and was also an officer of the American Express Company, is believed to have been Vice President of said latter company. One Alonzo Wygant was a Director and Secretary of Brink's Chicago City Express Company from January 13, 1888 to December 23, 1907 and was a General Superintendent of the United States Express Company. It is not known whether either of these individuals owned any securities in the American Express Company or the United States Express Company, respectively."

From the foregoing it appears that neither Brink's, Incorporated, nor Brink's Chicago City Express Company was ever an express company, sleeping-car company or carrier by railroad subject to part I of the Interstate Commerce Act. Also there is insufficient evidence that either company was ever owned or controlled by or under common control with such an express company, sleeping-car company or carrier by railroad, but in any event the operations of the companies, if services in connection with railroad transportation, were no more than trucking operations. It is my opinion, therefore, that the Brink's Chicago City Express Company was not an "employer" under the Railroad Retirement Act and that Brink's, Incorporated, has never been an "employer" under the Railroad Retirement Act or Railroad Unemployment Insurance Act and that service to neither company is creditable under those Acts.

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The service of Mr. Winklepleck, prior to July 1, 1918, was verified on Form AA-2P completed by Railway Express Agency, Incorporated, in September 1941, but in a letter dated April 21, 1942, to the Regional Director, Chicago, Illinois, Mr. Paul Gross, Jr., General Auditor, Railway Express Agency, Incorporated, states: "It has since been found that the service claimed prior to July 1, 1918, was performed for the Brinks Chicago City Express, an independent contractor and not an employer under the Railroad Retirement Act." In response to our request for copies of contracts between Brink's and the Railway Express Agency, Incorporated, Mr. Gross states:

"We have made a complete search of our files and were unable to locate any contract or record of agreements made between the Brink's Chicago City Express Company and United States Express Company, American Express Company or Adams Express Company.

"Our General Manager has made inquiry of some of the older employees and it is the consensus of opinion that there was no contract or agreements with Brink's, and that we only called on them on special occasions, the same as we would on any other concern who had suitable equipment to move special shipments and they would be paid for that particular job."

On the basis of Mr. Gross' statement, it is my opinion that Mr. Winklepleck in his service as "deliveryman", under the circumstances as described by Mr. Gross, was not during the periods in question an "employee" within the meaning of the Railroad Retirement Act of the Railway Express Agency, Incorporated.

Kyles F. Gibbons
General Counsel

HFC:lr