

OCT 12 1961

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John R. Wallace, Esq.
General Counsel
Northeast Oklahoma Railroad Company
Miami, Oklahoma

Dear Mr. Wallace:

I have your letter of October 6, 1961, to the Railroad Retirement Board, advising that your railroad has recently been authorized by the Interstate Commerce Commission to act as a common carrier in the transportation of freight by motor transport (not necessarily supplemental to the transportation of freight by rail), and inquiring whether the employees of the railroad engaged solely in the transportation of freight by motor transport are subject to the Railroad Retirement Act.

Although section 1(a) of both the Railroad Retirement Act and the Railroad Unemployment Insurance Act (45 U.S.C. §§ 228a(a), 351(a)), in effect specifically excludes from coverage as "employers" subsidiaries or companies affiliated with carriers by railroad and engaged only in trucking service, this exclusion has no application to railroad companies which themselves also directly engage in trucking operations. In fact, many railroad companies do engage in some trucking operations, and their employees in these operations, as well as in other non-railroad activities, are all considered covered by the Acts; there is nothing in the definition of "employee" (section 1(b) and (c) of the Railroad Retirement Act and 1(d) and (e) of the Railroad Unemployment Insurance Act; 45 U.S.C. §§ 228a(b) and (c), 351(d) and (e)) which would exclude such individuals so long as they are employed by a carrier by railroad "employer".

It is possible, of course, that the non-railroad activities of a company may be so predominant that the company as a whole need not be regarded as a carrier by railroad "employer", and in such case the Board's regulations (20 CFR section 202.3) provide that if the railroad carrier entity may be found to be a separable and identifiable enterprise conducted by the company, it may be segregated from the company's other business activities and alone held to be the "employer" subject to the Acts. (In such event, only those individuals serving the railroad carrier entity would be covered "employees".) It is my

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impression from your letter that this will not be the situation with respect to your company's trucking operations, but if my understanding is not correct, you may wish to furnish detailed information to show that the segregation regulation should be applicable to your company.

Very truly yours,

Myles F. Gibbons
General Counsel

cc: Director of Wage and Service Records

MFG:jw