

SEP 20 1946

The Director of Retirement Claims

L-48 651

M-158

The General Counsel

Virginian Limestone Corporation
(Ripplemead, Virginia)

[REDACTED]

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

QUESTION

Has the Virginian Limestone Corporation ever been an "employer" under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act?

OPINION

It is my opinion that the Virginian Limestone Corporation 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 reveal the name of the Virginian Limestone Corporation. Information furnished by Mr. D. E. Hamlett, Secretary and Treasurer of the Virginian Limestone Corporation (hereinafter sometimes referred to as the "Limestone Corporation"), in letters dated August 16, 1943, and August 30, 1943, is that the Limestone Corporation was incorporated on March 21, 1916, under the laws of the State of Virginia, "for the purpose of quarrying and crushing stone and the sale of same"; that the Limestone Corporation owns and operates about five miles of trackage in connection with its quarrying operations; that this trackage, in addition to the trackage in the quarry, consists of a track leading from the main line of the Virginian to the quarry and several loading tracks, referred to as washing plant tracks, on the other side of the Virginian's main line; that it operates one small

Memorandum to
The Director of Retirement Claims

locomotive, two locomotive cranes, five 10-yard quarry cars electrically operated, and five 6-yard dump cars; that it has never operated over any trackage of any railroad other than its own, except to cross the main line of the Virginian during a period of development and stripping; during which time it loaded dirt and clay in the quarry, hauled it to the east end of its yards, crossed the main line of the Virginian, and dumped the material on a fill where the washing plant tracks are now located; that its railroad operations are confined to the movement of stone from its quarry to its crushing plant and the loading of cars at its main plant tipple and its washing plant tipple and placing the cars where they can be picked up by the Virginian; that it has never performed rail transportation for others and has never held itself out to the public as a common carrier by railroad; that it has never filed with the Interstate Commerce Commission any tariffs, concurrences, powers of attorney, annual or other reports; that "The Virginian Railway financed the construction of the plant operated by the company, taking a first mortgage on all the property of the company, primarily to secure a source of ballast supply. The mortgage obligations have been met so that the railway has never had any control over the operation of the property"; that the Limestone Corporation 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 Limestone Corporation's record of security holders nor any other record or source of information indicates any direct or indirect ownership of the Limestone Corporation's voting securities by any express company, sleeping-car company or carrier by railroad; that no officer or director of the Limestone Corporation is or has been an officer or director of any express company, sleeping-car company or carrier by railroad; that neither the Limestone Corporation's record of security holders nor any other record or source of information indicates any direct or indirect ownership of the Limestone Corporation's voting securities by a person or company who or which also directly or indirectly owns the voting securities of any express company, sleeping-car company or carrier by railroad; that from 30% to 80% of the Limestone Corporation's output has been sold to the Virginian "depending on the requirements of the railway as well as other demand"; that approximately 50% of the revenue of the Limestone Corporation has been derived from sales of stone to the Virginian; and that it has not sold stone to any other railroad company.

Mr. L. A. Markham, Assistant to President, The Virginian Railway Company, in letters dated September 9, 1943, and January 6, 1944, states that there were no trackage agreements between the Virginian and the Limestone Corporation and that "The only time our tracks are used by the Limestone Corporation is in crossing our main line from their north side to their south side tracks and vice versa which movements are covered by train order." Mr. Markham states that no director, official or employee of the Virginian has ever exercised control over the affairs or operations of the Limestone Corporation. He submitted a copy of a contract dated

Memorandum to
The Director of Retirement Claims

September 1, 1917, under which stone is sold by the Limestone Corporation to the Virginian. The contract provides for the sale by the Limestone Corporation to the Virginian of not less than 100,000 cubic yards and not more than 200,000 cubic yards of crushed stone per year. The price was to be so much per cubic yard for ballast or screenings and 10 cents per cubic yard for stone dust. The contract was to run for 10 years but could be cancelled by the Virginian on 30 days' notice if the Limestone Corporation failed to furnish the stone of the kind or in the amount or at the rate of delivery provided in the contract.

From the foregoing it is clear that the Virginian Limestone Corporation, which appears to have been engaged in the production and sale for commercial purposes of crushed stone and whose railroad operations have been confined to the movement of its own property, or "plant facility" operations, was not an express company, sleeping-car company or carrier by railroad and there is no showing that it was owned or controlled by or under common control with either the Virginian, which at one time held the mortgage on its property, or any other railroad company. Therefore, it is my opinion that the Virginian Limestone Corporation 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.

In connection with his claim Mr. Griffith states: "During those years I was in Klotz, Virginia, serving as conductor on a work train. I was in the employ of the Virginian Railway Company, governed by the rules and regulations of the company. Although I was paid by the Virginian Limestone Corporation, this section was part of the main line of the Virginian railroad, and according to the Inter-state Commerce Law, the Virginian Railway Company had to furnish such service to the Limestone Corporation. As I stated before, I was subject to the regular time-table rules, train orders from the superintendent, and the Virginian Book of Rules. The contract which the Order of Railway Conductors had with the Virginian Railway Company, called for a regular company conductor to handle such work wherever the main line of the railroad was needed." The Railway Company's president, however, stated in this connection that there was no contract between the Railway Company and the Limestone Corporation covering the employment of the applicant Griffith but that Griffith, who had been in Railway service as a conductor and was carried throughout on the Railway's seniority list, "was given permission," because he was not physically able to engage in main line service, "to accept employment as work-train conductor for the Virginian Limestone Corporation."

From all this, it appears that [redacted] employment on the Limestone Corporation's train was no more than that of a "loaned employee" of the Railway Company, such Railway Company directions and rules to which he was subject while in such employment being nothing more than those necessary in the coordination of the operations of the two companies at the points of interchange and crossing. Accordingly, it is my opinion that Griffith

Memorandum to
The Director of Retirement Claims

was not the "employee" of the Railway Company with respect to the work-train service in question but of the Limestone Corporation and therefore that such service is not creditable under the Railroad Retirement Act. General Counsel's Opinion L-39-342.

Myles F. Gibbons
General Counsel

HFC:lr