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L 53-571

The Director of Wage and Service Records

The General Counsel

Addison Miller Company
Miller and Colianni

In General Counsel's Opinion L-41-628 it was held that the service of workmen under a contract dated September 5, 1919 between Miller and Colianni (Miller and Colianni was reorganized as Addison Miller Company on March 1, 1920) and the Duluth, Missabe and Northern Railway Company, covering the handling of locomotive coal and related engine terminal services at Proctor and Coleraine, Minnesota, was "employee" service. See Employer Status List Item No. 4110 (Addison Miller) showing the period of creditable service as March 1, 1920 to December 1931 and Employer Status List Item No. 4115 (Miller and Colianni) showing the period of creditable service as September 5, 1919 to March 1, 1920.

In view of the court decisions in Reynolds v. Northern Pacific Railway Company, 168 F. (2d) 934, cert. denied, 335 U.S. 828, Nicholas v. Denver and Rio Grande Western Railroad Company, 195 F. (2d) 428, and Kalm v. Chicago, St. Paul, Minneapolis and Omaha Railway Company, 104 F. Supp. 745, affirmed C.C.A. 8th No. 14713, August 10, 1953, I now conclude that the service in question is not "employee" service and General Counsel's Opinion L-41-628 is hereby reversed. Appropriate Form C-341 will be released giving effect to the foregoing.

Hyles F. Gibbons
General Counsel

HFC/dac