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L-48 467

The Director of Retirement Claims

The General Counsel

Vang Construction Company

[REDACTED]
Service claimed as track laborer at Millvale, Pennsylvania during the month of December 1923 under a contract between the above-mentioned company and the Baltimore and Ohio Railroad Company

In response to your request of November 21, 1945 I herewith submit my opinion on the following:

QUESTION

Is service under a contract dated October 15, 1923 between the Vang Construction Company and the Baltimore and Ohio Railroad Company covering the grading, track laying, surfacing, etc., for track changes required in Willow Grove Yard creditable under the Railroad Retirement Act.

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

Information furnished by George Vang Inc., successor to the Vang Construction Company, is that the latter was engaged generally in construction work and did not confine its services to the Baltimore and Ohio or its subsidiary companies; that the construction company was not set up in business or otherwise financed by the Baltimore and Ohio or any of its subsidiary companies, and was not directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad.

On the basis of the foregoing information it is my opinion that the Vang Construction Company was not an employer within the Van

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meaning of the Railroad Retirement Act. Furthermore, it is my opinion that individuals engaged in service under the contract in question were not within the meaning of the Railroad Retirement Act the employees of the Baltimore and Ohio but were the employees of the construction company. The contract let, after competitive bidding, to a company engaged in general construction work called for the completion of a specific job on or before a specified date with tools and plant to be furnished by it. All defective work was to be made good by the construction company. The construction company agreed to indemnify the Baltimore and Ohio against all liability for injuries to persons and damage to property arising out of work under the contract. While compensation was provided for on a cost plus basis there is nothing in the contract, either by express provision or implied which would give the Baltimore and Ohio the right to control with respect to the manner of performing their work the individuals engaged in service under the contract, and whether or not the service was rendered on the property used in the Baltimore and Ohio's operations there is no evidence that it was "integrated" into its operations.

Accordingly service under the contract in question is not creditable under the Railroad Retirement Act.

Myles F. Gibbons
General Counsel

HPC:agr