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L 53-567

The Director of Wage and Service Records

The General Counsel

Addison Miller

In General Counsel's Opinion L-43-141 it was held that the service of workers under a contract dated September 14, 1920 between Addison Miller and the Chicago, Milwaukee and St. Paul Railway Company, covering the handling of locomotive coal, cleaning of cinder pits and drying of sand at several locations in the Dakotas and Montana, was "employee" service within the meaning of the Railroad Retirement Act. See Employee Status List Item No. 4110 showing the period of creditable service as September 14, 1920 to December 1, 1922.

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 Kelm v. Chicago, St. Paul, Minneapolis and Omaha Railway Company, 104 F. Supp. 745, affirmed C.C.A. 8th No. 14710, August 10, 1953, I conclude that the service in question is not "employee" service and General Counsel's Opinion L-43-141 is hereby reversed. Appropriate Form C-341 will be released giving effect to the foregoing.

Hyles F. Gibbons
General Counsel

HFC/dmc