

DEC 4 1946

The Director of Retirement Claims

L-45 774

The General Counsel

The T. A. Gillespie Company

[REDACTED]
Service claimed as steam shovel engineer between Meadville and Cambridge Springs, Pennsylvania, from May 1912 to April 1913, under a contract between the above-mentioned company and the Erie Railroad Company

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

QUESTION

Is service under a contract dated April 12, 1912, between The T. A. Gillespie Company (hereinafter sometimes referred to as the "Gillespie Company") and the Erie Railroad Company, covering the construction of a double track roadbed on the Meadville Division, creditable under the Railroad Retirement Act?

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

The name of the Gillespie Company does not appear in Poor's or Moody's manuals. However, the files in this office indicate that the Gillespie Company had contracts with the Erie, the Pennsylvania and the Wabash Pittsburg Terminal. Furthermore, it is known that the Gillespie Company had contracts in connection with the construction of Grand Central Terminal and of portions of the New York subway. Since from the foregoing, which is all the information available concerning it, it appears that the Gillespie Company was engaged in general construction work and was not an express company, sleeping-car company or carrier by railroad, and since there is no evidence at hand to indicate that it was owned or controlled by or under common control with any such company or carrier, it is my opinion that the Gillespie Company was not an "employer" within the meaning of the Railroad Retirement Act.

Memorandum to
The Director of Retirement Claims

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 Erie but were the employees of the Gillespie Company. The contract, awarded to a company which apparently was engaged in general construction work, provided for the completion of a specific job on or before a specified date. The Gillespie Company was to furnish all labor, tools and materials and compensation was provided for on a unit price basis; that is, so much per cubic yard for excavation, so much per cubic yard for concrete, etc. The Gillespie Company was required to post a bond conditioned on the faithful performance of the contract and was required to keep the work fully insured. The work was to be conducted "entirely at the risk of" the Gillespie Company. The foregoing considerations are strong indications of the independent status of the Gillespie Company. General Counsel's Opinion L-44-549. Some measure of control by the carrier over the contractor is found in a provision that the work was to be done under the direction of the chief engineer of the carrier, but this provision is clearly outweighed by the factors pointing to the independent status of Gillespie. General Counsel's Opinion L-42-476.

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

Myles F. Gibbons
General Counsel

HPC:lr