

Chief
AUG 21 1945

The Director of Retirement Claims

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The General Counsel

Harding & Slattery

[REDACTED]
service claimed as bridge and building carpenter between
Bloomington and Lafayette, Indiana, from the spring of
1912 to the fall of 1912, under a contract with the Chicago,
Indianapolis and Louisville Railway Company

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

QUESTION

Is service under a contract dated April 5, 1911,
between Harding & Slattery and the Chicago,
Indianapolis & Louisville Railway Company, cover-
ing the construction of masonry work at various
points on the lines of the carrier during the
year 1911, creditable under the Railroad Retirement Act?

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

An examination of Poor's and Moody's manuals does not reveal the
name of Harding & Slattery. Information furnished by Mr. R. B. Streit,
Comptroller, Chicago, Indianapolis & Louisville Railway Company, with his
letter dated November 14, 1944, is that Harding & Slattery were "regular
contractors and worked on competitive bid plan." He suggested that one
Chase Harding of Crawfordsville, Indiana, should be in a position to furnish
information with respect to the firm. Information furnished by Mr. Chase
Harding in a letter dated August 10, 1945, is that Harding & Slattery was
not directly or indirectly owned or controlled by or under common control
with any express company, sleeping-car company or carrier by railroad; that

Memorandum to
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it was engaged in general construction work under contract and was not set up in business or otherwise financed by the Chicago, Indianapolis & Louisville or any other express company, sleeping-car company or carrier by railroad.

Since it appears from the foregoing that Harding & Slattery was not an express company, sleeping-car company or carrier by railroad, and that it was not owned or controlled by or under common control with any such company or carrier, it is my opinion that Harding & Slattery was not an "employer" under 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 carrier but were the employees of Harding & Slattery. The contract, let after competitive bidding to a firm engaged in general construction work, called for the completion of certain specified jobs. The contractor was to prosecute each job "diligently to completion." He was to furnish all materials, equipment and tools. He was to be compensated at unit prices, that is, so much per cubic yard for excavation, so much per 1,000 feet, board measure, for timber in foundations, cofferdams, etc. The contract provided further that the "position of said Partnership [Harding & Slattery] toward all work shall be that of an independent contractor, and said Partnership will protect and save said Railway Company harmless from all claims on the part of their employees for injuries received or death resulting while employed on such work, not due to the negligence of said Railway Company." The foregoing considerations are strong indications of the independent status of the contractor, General Counsel's Opinion L-44-549, and there is nothing in the contract to give the carrier control over the contractor in the manner of doing the work.

Accordingly, it is my opinion that service under the contract in question is not creditable under the Railroad Retirement Act.

Hyles F. Gibbons
General Counsel

HFC:lr