

MEMORANDUM

L-45-336

M-80

May 25, 1945

TO The Director of Retirement Claims

FROM The General Counsel

SUBJECT Minneapolis Steel & Machinery Company

[REDACTED]

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

QUESTION

Is service under a contract dated September 19, 1922, between the Minneapolis Steel & Machinery Company and the Northern Pacific Railway Company, covering repairs to locomotives of the carrier, creditable under the Railroad Retirement Act?

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

The Minneapolis Steel & Machinery Company was incorporated on April 22, 1902, and was engaged in the fabrication of structural steel for buildings, bridges, water towers, etc. It manufactured farm and road tractors, auto trucks, threshing machines, grey iron castings, etc. It also rebuilt locomotives. Its plant was located on 28 acres at Minneapolis, Minnesota, and it had branch houses and sales offices in various states and in Winnipeg, Regina and Calgary. On March 30, 1929, it was consolidated with The Minneapolis Threshing Machine Company and the Moline Implement Company to form the Minneapolis-Moline Power Implement Company. Moody's Industrials (1928); Moody's Industrials (1944).

The General Counsel

Information furnished by Mr. W. C. Rich, Secretary, Minneapolis-Moline Power Implement Company, in a letter dated June 1, 1943, is that the Minneapolis Steel & Machinery Company never was directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad; that it neither directly or indirectly owned or controlled any express company, sleeping-car company or carrier by railroad; that it neither directly or indirectly owned or controlled any voting power over any express company, sleeping-car company or carrier by railroad; that no express company, sleeping-car company or carrier by railroad ever directly or indirectly owned or controlled any voting power over it; that no person or company who or which directly or indirectly owned or controlled any voting power over the company also directly or indirectly owned or controlled any voting power over any express company, sleeping-car company or carrier by railroad; that no officer or director of the company was also an officer or director of any express company, sleeping-car company or carrier by railroad; and that during the years 1922, 1923, and 1924, the company engaged in the repair of locomotives for the Northern Pacific, the Minneapolis & St. Louis, Great Northern, Chicago and North Western and the St. Paul Bridge and Terminal Railroad Company.

Since it is clear from the foregoing that the Minneapolis Steel & Machinery Company, a company primarily engaged in the fabrication of structural steel and in the manufacture of vehicles and machines of various types, was not an express company, sleeping-car company or carrier by railroad and since it is equally clear that it was not owned or controlled by or under common control with any such company or carrier, it is my opinion that the Minneapolis Steel & Machinery Company 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 the employees, within the meaning of the Railroad Retirement Act, of the Northern Pacific Railway Company but were the employees of the Minneapolis Steel & Machinery Company.

The contract, in the form of a letter dated September 19, 1922, addressed to J. M. Rapelje, Vice President of the Northern Pacific Railway, by George L. Gillette, manager of sales of the Steel Company, and a memorandum of conference (September 25, 1922) between Gillette of the Steel Company and W. H. Wilson, representing the Northern Pacific Railway Company, provided that at a stipulated rate per hour the Steel Company would repair at its plant not less than 72 locomotives of the carrier per year. The carrier was to furnish all material; there was to be no charge by the Steel Company

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for loading or unloading the material because "The above named shop rates cover all overhead items." The Steel Company was to permit the Railway Company to have an auditor at its plant "who will check the time slips and materials used for all work done." At the time of entering into the arrangement, the Steel Company had locomotive repair contracts with certain other railroads in the same area. On October 11, 1922, it was agreed by the parties to the original agreement to increase the number of locomotives to be repaired during the year 1923 to 150, and on March 28, 1923, it was agreed that repairs to the remaining 78 locomotives would be made on a "unit cost basis," the exact amount to be determined after a joint check of costs. In a letter dated November 21, 1923, Mr. Charles Donnelly, President, Northern Pacific Railway Company, informed the Steel Company that since there was nothing in the original agreement suggesting any intention on the part of the carrier to extend the arrangement beyond the year 1923, and since the cost of having the work done in the Steel Company's shop was far in excess of the cost to the carrier of performing it in its own shops, it was the desire on the part of the carrier that the arrangement be terminated. Mr. Donnelly went on to say that he appreciated that the Steel Company had been subjected to considerable expense in preparing to take on the work and that therefore he was willing to give the Steel Company a sufficient number of engines to be repaired during the first four months of 1924 to make the number of engines repaired reach the total estimated for the year 1923. This appears to have been done and the agreement terminated accordingly.

While it appears from the foregoing that the Steel Company performed the contract work on a time basis, for the most part, and apparently had not previously been engaged to any great extent in locomotive repair operations, it is to be noted that it was engaged generally in the manufacture of machinery (farm equipment) and did the work at its own plant; that it incurred considerable expense in refitting its plant for the work, and that there is no specific provision permitting the carrier to retain control over the manner of doing the service contracted for.

Accordingly, I conclude that service under the arrangement is not creditable under the Railroad Retirement Act.

Myles F. Gibbons
General Counsel