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service with all his or her seniority rights.

§ 204.4 Conditions which preclude an employment relation.

(a) An individual shall not have been on August 29, 1935, an employee by reason of an employment relation if, during the last payroll period in which he or she rendered service to an employer prior to that date, such service was rendered outside of the United States to an employer not conducting the principal part of its business in the United States.

(b) An individual may not acquire an employment relation solely by virtue of service to a local lodge or division of a railway labor organization.

§ 204.5 Employment relation—deemed service.

For the purpose of crediting deemed service months as provided in § 210.3(b) of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be deemed. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer or after the individual becomes entitled to receive an annuity under the Railroad Retirement Act.

§ 204.6 Employment relation—pay for time lost.

For the purpose of crediting pay for time lost as provided in § 211.3 of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be credited with pay for time lost. For that purpose an employment relation exists with respect to any month in which an individual, al-

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though not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer.

§ 204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Service by an individual to a local lodge or division of a railway labor organization shall be creditable under the Railroad Retirement Act only if, prior to such service, and on or after August 29, 1935, such individual performed compensated service for a carrier employer under part 202 of this chapter or was in an employment relation to such a carrier employer under the rules set forth in § 204.3 of this part.

PART 205—EMPLOYEE REPRESENTATIVE

Sec.

- 205.1 Introduction.
- 205.2 Definition of employee representative.
- 205.3 Factors considered in determining employee representative status.
- 205.4 Claiming status as an employee representative.
- 205.5 Reports of an employee representative.
- 205.6 Service of an employee representative.
- 205.7 Termination of employee representative status.

AUTHORITY: 45 U.S.C. 231, 45 U.S.C. 231f, 45 U.S.C. 231h.

SOURCE: 53 FR 39255, Oct. 6, 1988, unless otherwise noted.

§ 205.1 Introduction.

This part sets out the various factors considered in determining an individual's status as an employee representative under section 1(b)(1) of the Railroad Retirement Act, and discusses the procedure for reporting and crediting of compensation and service as an employee representative under that Act.

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An employee representative is considered to be a covered employee under the provisions of the Railroad Retirement Act.

§205.2 Definition of employee representative.

(a) An individual shall be an employee representative within the meaning of the Railroad Retirement Act if he or she is an officer or official representative of a railway labor organization, other than a labor organization included in the term "employer" within the meaning of part 202 of these regulations, who before or after August 29, 1935, was in the service of an "employer" within the meaning of part 202 of these regulations and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(b) An individual is also considered to be an employee representative within the meaning of the Act if he or she is regularly assigned to or regularly employed by an individual described in paragraph (a) of this section in connection with the duties of the office of employee representative of said individual.

(c) *Example.* A is employed by railroad R as a carman. He is also employed as recording secretary for the local chapter of union U, which has been recognized as the collective bargaining representative of the carmen of R. Although U represents some railroad employees, it is not a railway labor organization as described in part 202 of these regulations. A is an employee representative. His service for U is treated as employee service under the Railroad Retirement Act.

§205.3 Factors considered in determining employee representative status.

The following factors, among others, are considered by the Board in determining an individual's status as an employee representative:

(a) The name of the last railroad or other employer under the Act by which the individual was employed, and the period of employment;

(b) The present official name of the organization by which the individual is employed, as well as any other name(s)

under which that organization operated previously;

(c) The date on which the organization was founded;

(d) The title of the position held by the individual within the organization, and the duties of said position;

(e) The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the time period covered by said authorization;

(f) The purpose or business of the organization as reflected by its constitution and by-laws;

(g) The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry;

(h) The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:

(1) The specific employee group(s) represented; and

(2) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers;

(i) Whether the organization has been certified by the National Mediation Board as a representative of any class of employees of any company;

(j) If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees;

(k) Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board; and

(l) Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any contributions payable to the organization.

§ 205.4 Claiming status as an employee representative.

An individual who claims status as an employee representative shall file a report in accordance with § 209.10 of this chapter.

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§ 205.5 Reports of an employee representative.

An annual report of creditable compensation shall be made by an employee representative in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014)

§ 205.6 Service of an employee representative.

Service rendered as an employee representative is creditable in the same manner and to the same extent as though the organization by which the employee representative was employed were an employer under the Railroad Retirement Act. (Creditable railroad service is discussed under part 210 of the Board's regulations.)

§ 205.7 Termination of employee representative status.

The employee representative status of any individual shall terminate whenever the individual or the organization by whom he or she is employed loses any of the characteristics essential to the existence of employee representative status.

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

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- 209.1 General.
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- 209.12 Employers' gross earnings reports.
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- 209.14 Report of separation allowances subject to tier II taxation.
- 209.15 Compensation reportable when paid.
- 209.16 Disposal of payroll records.
- 209.17 Use of payroll records as returns of compensation.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 49 FR 46729, Nov. 28, 1984, unless otherwise noted.

§ 209.1 General.

Benefits under the Railroad Retirement Act are based in part upon an individual's years of service and amount of compensation credited to the individual under the Act. It is the duty of the Board to gather, keep and compile such records and data as may be necessary to assure proper administration of the Act. This part sets forth the types of reports employers are required to make to the Board and states the penalties that the Board may impose upon employers and employees who fail or refuse to make required reports.

§ 209.2 Duty to furnish information and records.

In the administration of the Railroad Retirement Act of 1974, the Board may require any employer or employee to furnish or submit any information, records, contracts, documents, reports or other materials within their possession or control, that, in the judgment of the Board, may have any bearing upon:

- (a) The employer status of any individual, person or company,
- (b) The employee or pension status of any individual,
- (c) The amount and creditability of service and compensation, or
- (d) Any other matter arising which involves the administration of the Railroad Retirement Act. Any person who knowingly fails or refuses to make any report or furnish any information required by the Board, may be punished by a fine of not more than \$10,000