

## Railroad Retirement Board

## § 203.7

(b) The provisions in paragraph (a) of this section are controlling irrespective of whether the service is performed on a part-time basis, and, with respect to paragraph (a)(1) of this section, irrespective of whether the right to supervise and direct is exercised.

### § 203.4 When service is compensated.

Service shall be "compensated" if it is performed for compensation, as that term is defined in part 222 of this chapter: *Provided, however*, That service prior to September 1941 of a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations shall be considered compensated service although the individual's remuneration was, in whole or in part, in the form of tips. (For the effect of compensation of less than \$3.00 per month earned after December 31, 1936, for service to a local lodge or division of a railway-labor-organization employer, see part 222 of this chapter.)

(Sec. 3, 50 Stat. 310, as amended; 45 U.S.C. 228c)

### § 203.5 Service outside the United States.

(a) An individual shall not be an employee by reason of rendition of service to an employer other than a local lodge or division, or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States except while engaged in performing service for it in the United States.

(b) An individual shall not be an employee by reason of rendition of service to a local lodge or division, unless:

(1) All, or substantially all the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(2) The headquarters of such local lodge or division is located in the United States.

(c) An individual shall not be an employee by reason of rendition of service to a general committee of a railway-labor-organization employer, unless:

(1) Such individual is representing a local lodge or division, all or substan-

tially all of whose members are employees of an employer conducting the principal part of its business in the United States, or the headquarters of such local lodge or division is located in the United States; or

(2) All or substantially all the individuals represented by such a general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) Such an individual acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer; *Provided, however*, That if the office or headquarters of such general chairman or assistant general chairman is not located within the United States he will not be an employee unless 10 percent or more of his remuneration for service as general chairman or assistant general chairman is creditable as compensation, the creditable compensation to be computed according to the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, or according to a formula to be prescribed by the Board if the mileage formula is inapplicable.

### § 203.6 Age, citizenship, and other factors.

The age, citizenship, or residence of an individual, or his designation as other than an "employee" shall not be controlling in determining whether or not such individual is an employee within the meaning of the act, except that an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required by the laws of the place where the service is performed to employ, in whole or in part, citizens or residents thereof and the laws in force therein on August 29, 1935, shall be deemed to have been in force at all times prior to that date.

[Board Order 55-89, 20 FR 3706, May 27, 1955]

### § 203.7 Local lodge employee.

An individual who, prior to January 1, 1937, shall have rendered service to a

local lodge or division of a railway labor organization included as an employer under section 1(a) of the act, shall be an employee with respect to such service to such local lodge or division only if he was on August 29, 1935, in the service of or in an employment relation to an employer which was a carrier. An individual who, subsequent to December 31, 1936, shall have rendered service to a local lodge or division of a railway labor organization included as an employer under section 1(a) of the act, shall be an employee with respect to such service to such local lodge or division only with respect to such service as was preceded by service, or an employment relation, on or after August 29, 1935, to an employer which was a carrier. (For the effect of compensation less than \$3.00 per month earned after December 31, 1936, for service to a local lodge or division of a railway-labor-organization employer, see part 222 of this chapter.)

## PART 204—EMPLOYMENT RELATION

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

SOURCE: 54 FR 5224, Feb. 2, 1989, unless otherwise noted.

### § 204.1 Introduction.

In order for an individual to receive credit under the Railroad Retirement Act (Act) for railroad service prior to 1937, he or she must establish that he or she was actively working for an employer under the Act on August 29, 1935, or was in an employment relation to an employer on that date. Section 204.3 of this part defines employment relation for purposes of establishing prior service. It is also necessary to establish an employment relation to an employer for any month in which an

individual wishes to receive a deemed service month, as provided for in § 210.3 of this chapter, and to receive credit for pay for time lost as provided for in § 211.3 of this chapter. This part defines employment relation for these purposes. See §§ 204.5 and 204.6. In addition, in order for an individual to have his or her service to a local lodge or division of a railway labor organization considered as creditable service under the Act, he or she must establish that he or she was working for a railroad or in an employment relation to a railroad on or after August 29, 1935, and that such employment or employment relation preceded his or her service to the local lodge or division. Section 204.7 defines employment relation for this purpose.

### § 204.2 Employment relation—determination by the Board.

The existence or non-existence of an employment relation, as defined in this part, is a conclusion which must be reached by the Board or its authorized officers or employees upon the basis of the evidence before the agency. The employer and the employee are the principal sources of evidence with respect to a determination whether an employment relation existed, but the Board will not be bound by the mere conclusion of the employer or the employee that the employee had or did not have an employment relation.

### § 204.3 Employment relation—prior service.

An individual shall have an employment relation to an employer on August 29, 1935, for purposes of crediting service prior to January 1, 1937, if:

(a) He or she was in the service of an employer on that date; or

(b) He or she was on that date on leave of absence expressly granted by the employer or by a duly authorized representative of such employer, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(c) He or she was in the service of an employer after that date and before January 1946, in each of six calendar months, whether or not consecutive; or

(d) Before that date he or she did not retire and was not retired or discharged from the service of the last