



Legal Opinion L-2001-13
August 20, 2001

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TO : Bob Bergeron
Assistant to the Labor Member

FROM : Steven A. Bartholow
General Counsel

SUBJECT : S.S.A. No. xxx-xx-xxxx – P. B.
Back Pay

This is in reply to your inquiry of August 13, 2001, regarding the creditability of back pay awarded to P. B.

On June 6, 1998, Mr. B was dismissed from service with his railroad employer. On March 2, 2000, he was reinstated to his railroad service by order of the Railroad Adjustment Board, subject to certain conditions¹. On November 28, 2000, the Railroad Adjustment Board awarded Mr. B six months retroactive pay for the period he was in dismissed status. Since the period for which Mr. B was dismissed was substantially longer than six months, you inquire as to which months the award of back pay should be attributed to.

Back pay may constitute pay for time lost if certain conditions are met. First, the back pay must be intended to compensate the employee for time lost or for service in a less remunerative position than that in which the employee would have served absent some action by the employer. Second, the back pay must be paid with respect to an identifiable period of time. Third, the back pay must be paid with respect to months in which there existed an employer-employee relation or, if such relation did not exist, as in the case of discharge, the back pay award also included reinstatement with full rights. See Legal Opinion L-90-28.

The back pay award in this instance is clearly intended to compensate the employee for time lost and included reinstatement with full rights. It is my opinion that the fact that the six months to which the back pay is attributable within the 21 month period for which the employee was dismissed are not specified does not mean that the back pay is not attributable to an identifiable period of time. In reporting the award of back pay, Mr. B.'s railroad employer must report a specific six months. The Board should accept the employer's determination as to which six months within the 21 month period to credit the back pay².

¹ Mr. B was required to pass a physical examination and drug screening before he could be reinstated. He was also required to undergo the recertification process for his engineer's license, including appropriate training, and to pass a rules examination.

² This conclusion assumes that Mr. B met the requirements imposed by the Railroad Adjustment Board and was reinstated. The decision awarding the six months back pay states that "On information and belief, [Mr. B] has complied with these conditions and has been reinstated to service."