



**Legal Opinion L-2004-03**  
**March 8, 2004**

U.S. Railroad Retirement Board Phone: (312) 751-7139  
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**TO** : Thomas W. Sadler  
Assistant to the Labor Member

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Regular Railroad Occupation

This is in response to your inquiry as to whether a railway labor organization job would be considered to be no longer available to a railway labor organization official who is removed from his/her labor office for cause prior to the end of his/her term of office. The issue of availability of a job must be addressed in identifying the employee's regular railroad occupation in connection with determining entitlement to an occupational disability annuity.

Legal Opinion L-92-29 discussed the conditions under which an employee's last employment in a railway labor organization is considered to be no longer available for the purpose of determining the last railroad occupation in accordance with 20 CFR (former) section 220.11(b). Section 220.11 was amended in 1998 (63 F.R. 7538, 7541, February 13, 1998), but continues to include the following provision which is identical to that quoted in L-92-29:

If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the "regular occupation" shall be the position to which the employee holds seniority rights or the position which he or she left to work for a railway labor organization.

Legal Opinion L-92-29 found that the railway labor organization position would be considered to be no longer available where (1) the employee is not reappointed to the position; (2) the employee does not run for reelection; (3) the employee loses the election; or (4) the position is abolished. It found that the railway labor organization position remains available if the employee quits during his/her term.

A subsequent legal opinion issued that same year, Legal Opinion L-92-29.1 held that if a railway labor organization employee is medically disqualified from his/her union work and is told by the union that he/she may no longer perform that job, then the job is no longer available to the employee within the meaning of the Board's regulations. L-92-29.1 also found, however, that if the employee is medically disqualified from the railway labor organization job, but is not told by the union that he/she must give up that job, then the job remains "available" to the employee within the meaning of section 220.11.

With the possible exception of the situation in which an employee does not run for reelection,<sup>1</sup> the key factor to the determinations made in both 1992 legal opinions cited above is whether or not the employee has any option to remain in the railway labor organization position. In each case where the employee has no option to remain in the job, the labor position was found to be unavailable for purposes of determining the employee's regular railroad occupation.

In response to the question that you now raise, it is my opinion that if the employee is removed for cause from his/her railway labor organization job, the employee has no option to remain in that job and it therefore is unavailable to the employee under the Board's regulations. The employee's regular railroad

<sup>1</sup> Legal Opinion L-92-29 noted that its conclusion that section 220.11 was intended to cover the situation in which an employee does not run for reelection was based on a review of the history of the quoted regulation.



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occupation would then be the position to which the employee holds seniority rights or the position that the employee left to work for a railway labor organization.