

## 2501 Provisions of the RUIA and Railway Labor Act

### 2501.01 Section 4(a-2)(iii)

of the Railroad Unemployment Insurance Act provides that:

"There shall not be considered as a day of unemployment, with respect to any employee - subject to the provisions of subsection (b) of this section, any day with respect to which the Board finds that his unemployment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, and the Board finds that such strike was commenced in violation of the provisions of the Railway Labor Act or in violation of the established rules and practices of a bona fide labor organization of which he was a member."

### 2501.02 Section 4(b)

of the Railroad Unemployment Insurance Act provides that:

"The disqualification provided in section 4(a-2)(iii) of this Act shall not apply if the Board finds that--

- (1) the employee is not participating in or financing or directly interested in the strike which causes the stoppage of work: Provided, that payment of regular union dues shall not be construed to constitute financing a strike or direct interest in a strike within the meaning of this and the following paragraphs; and
- (2) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed in the establishment, premises, or enterprise at which the stoppage occurs, any of whom are participating in, or financing or directly interested in the dispute: Provided, that if separate types of work are commonly conducted in separate departments of a single enterprise, each such department shall, for the purpose of this subsection, be deemed to be a separate establishment, enterprise, or other premises."

### 2501.03 Section 2(a)(i)(A)(iii)

of the Railroad Unemployment Insurance Act provides that:

"(iii) Strikes.--

- "(I) Initial 14-day waiting period.--If the Board finds that a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such

employee was last employed, no benefits shall be payable for such employee's first 14 days of unemployment due to such stoppage of work.

- "(II) Subsequent days of unemployment.--For subsequent days of unemployment due to the same stoppage of work, benefits shall be payable as provided in clause (i) of this subparagraph.
- "(III) Subsequent periods of continuing unemployment.--If such period of continuing unemployment ends by reason of clause (v) but the stoppage of work continues, the waiting period established in clause (ii) shall apply to the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work.

### **2501.04 Section 9A of the Railway Labor Act**

After creating special procedures for resolving disputes involving publicly funded and operated commuter rail service, subsection (i) provides:

- "(i) If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act."

(The full text of section 9A of the Railway Labor Act is given in Appendix C.)

### **2502 Analysis of Section 4(a-2)(iii)**

#### **2502.01 Conditions under which a disqualification is applicable**

In general, the disqualification provided in section 4(a-2)(iii) is applicable with respect to a day claimed as a day of unemployment when all of the following conditions are found to exist:

- a. A work stoppage occurred.
- b. The claimant's unemployment on such day is due to the stoppage of work.
- c. Such work stoppage is caused by a strike in the establishment, premises, or enterprise at which the claimant was last employed.
- d. The strike was commenced in violation of either (1) the provisions of the Railway Labor Act, or (2) the established rules and practices of a labor organization of which the claimant was a member.

- e. The claimant was participating in, or financing (other than by paying regular union dues), or directly interested in the strike, or was a member of a grade or class of workers any of whom were participating in, or financing, or directly interested in the strike.

### **2502.02 Strike**

A determination that the work stoppage is caused by a strike is required in connection with any disqualification under section 4(a-2)(iii). Evidence that both the employer and employee agree that a strike caused the work stoppage is usually sufficient to support such a determination. When there is a disagreement between the employer and employees on this item, it is necessary to base the determination on the actions preceding the work stoppage of both the employer and its employees.

### **2502.03 Casual relationship**

If the claimant was employed in a particular establishment until the commencement of a work stoppage at the establishment, his or her ensuing unemployment, in the absence of other information, may be presumed to be due to such work stoppage. If the claimant became unemployed sometime prior to the commencement of the work stoppage, his or her continuing unemployment would not be considered as due to a strike.

### **2502.04 Railway Labor Act**

In general, employers listed in the Employer Status List as covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and common carriers by air, are required to comply with the provisions of the Railway Labor Act. (See Appendix B.)

### **2502.05 Established rules and practices**

The constitution, rules, regulations and by-laws as published by the union will usually suffice to show the established rules of the labor organization. Information regarding the established practices of the organization not covered by those publications can usually be obtained from a grand lodge officer.

## **2503 Analysis of Section 2(a)(1)(A)(iii)**

### **2503.01 Strike waiting period**

No benefits are payable for a claimant's first 14 days of unemployment due to a strike at his or her place of work. A strike waiting period is necessary for each period of continuing unemployment due to a strike.

### **2503.02 Satisfying the strike waiting period and waiting period for the benefit year**

A claim for unemployment due to a strike will serve as both the 14-day strike waiting period and as the 7-day waiting period for the benefit year, if it is the first claim of a period of unemployment in the benefit year. If the claimant returns to work and becomes unemployed again for another reason in the same benefit year, he or she will not have to serve a 7-day waiting period.

### **2503.03 Exhaustion of benefits and the strike waiting period**

Exhaustion of benefits ends a period of continuing unemployment. However, if a claimant remains unemployed due to a strike and exhausts his/her rights to unemployment benefits for the benefit year, the claimant will only have to satisfy a 7-day waiting period in the new benefit year. There is no need to satisfy a 14-day strike waiting period in the subsequent benefit year provided that the new period of continuing unemployment is due to the same strike.

## **2504 Investigation**

### **2504.01 Investigation required**

An investigation is to be conducted to obtain the information needed for a determination under section 4(a-2)(iii) of the Act under either of these circumstances:

- a. There is information that a strike has occurred on the premises of an employer covered by the RUIA.
- b. A claimant indicates "Strike" on Form UI-1 or Form UI-3 as the reason for his or her unemployment or there is other information indicating that the claimant's unemployment may be due to a stoppage of work arising out of a labor dispute.

### **2504.02 Information to be obtained**

The amount of information and evidence required for making a determination whether a disqualification under section 4(a-2)(iii) is applicable will depend on the circumstances in each case. Items of information that may be needed are described in Appendix A. In the case of a strike on the premises of a railroad employer, the information needed is discussed in detail in sections 1, 2, 3 and 4 of Appendix A. In the case of a non-railroad strike, the information in sections 1, 2 and 3 of Appendix A will be needed, but generally will be less detailed than in the case of a railroad strike. If a question arises as to the applicability of the strike disqualification to a particular individual (rather than to members of a grade or class of workers), the information called for in section 5 of Appendix A may be needed.

### **2504.03 Making investigation**

The Bureau of Field Service (BFS) is responsible for conducting the investigation of a strike confined to a particular region. If the strike is a railroad strike, BFS is to keep the Director of Policy and Systems informed of the progress of the investigation. In the case of a strike affecting more than one region, the Director of Policy and Systems will determine who is to make the investigation.

Investigation of a strike against a railroad employer is to be completed and a report of the investigation made to the Director of Policy and Systems within 10 days of the beginning date of the strike, so that a determination of the applicability of section 4(a-2)(iii) of the Act can be made not later than 15 days after the beginning date of the strike. If the investigation is not completed within 10 days, Director of Policy and Systems should be advised of the status and expected completion date.

### **2505 Information to headquarters**

When BFS receives information about a strike on a covered employer's property, all readily available information, including the best possible estimate of the number of strikers and the number of other employees unemployed because of the strike, is to be forwarded to the Director of Policy and Systems immediately by facsimile, telephone or e-mail.

When BFS receives information about a strike outside the railroad industry which will result in a substantial number of covered employees being unemployed, information as to the possible effect on the workload and other pertinent information is to be furnished by facsimile or e-mail to the Director of Policy and Systems.

### **2506 Determination**

A determination as to the applicability of the disqualification in section 4(a-2)(iii) may be made by BFS if the strike is a non-railroad strike confined wholly to the region. In all other cases, the determination will be made by the Director of Policy and Systems.

### **2507 Notice under section 2(f)**

A special letter is to be sent to covered employers explaining their responsibilities under section 2(f) as specified in AIM-30.

## Appendices

### Appendix A - When Strike Disqualification Should be Applied

#### **Information To Be Obtained When There Is A Question Whether A Disqualification Under Section 4(a-2)(iii) Should Be Applied**

##### **1. Work Stoppage**

- a. Extent of work stoppage.
  1. Employer
  2. Labor organization
  3. Location or locations
  4. Occupations and departments or organizational units of employer in which operations ceased
  5. Number of employees affected (show strikers and non-strikers separately)
- b. Date and time of work stoppage.
- c. Circumstances leading up to the work stoppage.
- d. Was the work stoppage initiated by employer or employees?
- e. Circumstances leading to resumption of work. If a court order was issued, state when and by what court. Obtain copies of the court order and related documents.
- f. Date and time work resumed.

##### **2. Dispute**

- a. A statement from an official of the employer and a statement from an official of the labor organization describing the circumstances which led to the work stoppage which is being investigated. Each statement should include a description of the actions taken in attempting to adjust the dispute. In addition, the statement of the labor organization official should contain a description of the action taken in connection with the decision to commence a work stoppage.
- b. Copies, if obtainable, of the communications between the employer and the labor organization concerning the dispute, or quoted pertinent excerpts from such communications. If copies cannot be obtained or

examined, a statement from an official of the labor organization describing such communications and stating as nearly as possible the date of each.

### **3. Rules and Practices of Labor Organization**

- a. Name of each labor organization which is a party to the dispute. Does such labor organization have a charter, a constitution, or by-laws?
- b. Copies, if obtainable, of the constitution, by-laws, rules or regulations of any labor organization which is a party to the dispute. If copies are not obtainable, excerpts may be taken from any documents concerning the settlement of disputes and the calling of strikes. If copies cannot be obtained or examined, a statement may be obtained from an official of the labor organization, describing the steps in the procedure for the settlement of disputes and for the calling of strikes as such procedure appears in the rules of the organization or is followed in practice and is recognized. Any such statement should be general and should not refer to the dispute under investigation.
- c. Whether a strike vote was taken, and, if so, the date, or the first and last dates, of the voting, the results of the voting, and the date and manner in which the strike notice was served upon the employer. If possible, furnish a copy of the strike notice and strike ballot.
- d. A statement from an official of the labor organization whether the work stoppage was commenced in accordance with the established rules and practices of the organization. The basis for the official's opinion in this connection should be expressed in the statement. Verification of a local official's contention in this connection should be obtained from higher organization officials if the rules and practices of the organization require a local organization to obtain the sanction of higher officials in strike action.

### **4. Railway Labor Act**

- a. Description and dates of actions taken to utilize the services of the National Mediation Board to effect settlement of the dispute. This description should include the date of submission of the dispute to the National Mediation Board or to the Emergency Board and the circumstances under which it was submitted. If possible, obtain a copy of the submission.
- b. Description and dates of actions taken by the National Mediation Board in an effort to effect settlement. If possible, obtain copies of communications between the National Mediation Board and the interested parties.

- c. The date of the report of the Emergency Board and the substance of the recommendations made in the report.
- d. A description of any changes in the conditions out of which the dispute arose, occurring after the creation of the Emergency Board and before the commencement of the strike, together with the dates of any such changes, for example:
  - 1. Changes in rates of pay, rules or working conditions made by common agreement.
  - 2. Changes in demands made by labor or management.
  - 3. Other changes made by management or labor.
- e. Any attempts made to settle the dispute by conference, arbitration, or mediation during the period of time after the report of the Emergency Board was made and before the strike commenced.

## 5. Claimant

- a. Date claimant became unemployed and the reason given by claimant for unemployment.
- b. Occupation
  - 1. Last occupation in which he worked.
  - 2. Customary occupation if different from his last occupation.
- c. Name of employer.
- d. Department or organization unit in which he last worked.
- e. Name of any labor organization of which the claimant was a member. If not a member of a labor organization, has he applied for membership in one?
- f. Whether the claimant performed picket duty after he became unemployed.

## Appendix B - Procedure for Settlement of Disputes under RLA

### Procedure for Settlement of Disputes as Provided in the Railway Labor Act

#### Introduction

Under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act unemployment benefits are not payable to an employee whose unemployment is

due to a strike commenced in violation of the provisions of the Railway Labor Act. Generally speaking, employers covered by the Railroad Unemployment Insurance Act are subject to the provisions of the Railway Labor Act. Thus, when an employee claims unemployment benefits for one or more days on which he was on strike against a covered employer, it is necessary, for a determination regarding the applicability of section 4(a-2)(iii), to find whether or not the strike was commenced in violation of the provisions of the Railway Labor Act. (This is in addition to the finding required with respect to the established rules and practices of the labor organization of which the claimant is a member.) A determination in any such case is made only on the basis of advice from the director of unemployment and sickness insurance.

The information to be developed in a strike case is outlined in Appendix A. Not all of the information listed is necessary in every case. AIM-25 explains the extent to which the information listed in Appendix A should be developed.

The provisions of the Railway Labor Act related to settlement of disputes are described briefly below. This information is given with the thought that it may help field office personnel who investigate strikes to anticipate what information may be required by the Director of Policy and Systems for a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act.

### **Purpose of the Railway Labor Act**

The purposes of the Railway Labor Act are, among other things:

1. To avoid any interruption to commerce or to the operation of any carrier engaged therein;
2. To provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.

### **National Railroad Adjustment Board**

The Railway Labor Act establishes a board known as the "National Railroad Adjustment Board", composed of four divisions. The Act defines the jurisdiction of each division by specifying the occupational groups of employees whose disputes with carriers are referable to the particular division.

Disputes between an employee, or group of employees, and a carrier over grievances or the interpretation or application of an agreement concerning rates of pay, rules, or working conditions, may be referred by petition of the parties or either party to the appropriate division of the Adjustment Board. An award of the Adjustment Board is final and binding upon both parties to the dispute.

The Adjustment Board is not directly involved in the proceedings pertinent to a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act. It is mentioned in this Appendix only as a matter of information.

## **National Mediation Board**

The Railway Labor Act also establishes an independent agency in the executive branch of the Government, known as the "National Mediation Board". This Board has jurisdiction over disputes concerning changes in rates of pay, rules, or working conditions and any other disputes not referable to the National Railroad Adjustment Board. Such Board may not be involved in the proceedings leading up to a strike of a covered employer. When it is involved, the circumstances under which it became a party to the proceedings and the efforts which such Board made to bring about a settlement are pertinent to a finding under section 4(a-2)(iii) of the Railroad Unemployment Insurance Act.

### **Procedure for settlement of disputes**

The provisions in the Railway Labor Act for the handling of major disputes retain the traditional process of negotiation, mediation, voluntary arbitration, and conciliation. The parties to a dispute are not compelled to utilize each and every one of the procedural steps provided. Nor does the Act specifically forbid a strike at any particular stage of the proceedings under the Act other than immediately after the creation of an Emergency Board and continuing for 30 days after such Board has made its report. The proceedings with respect to a particular dispute may not include the appointment of an Emergency Board. This is left to the "judgment" of the National Mediation Board and the "discretion" of the President of the United States.

### **General Duties**

The Railway Labor Act imposes these "General Duties" upon all carriers, their officers, agents, and employees:

1. "...to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes ... in order to avoid any interruption to commerce ...";
2. to consider and decide disputes in conference between representatives of the parties;
3. within 10 days after receipt of notice of a desire on the part of either party to confer in respect to such dispute to specify a time and place at which such conference is to be held;
4. no carrier, its officers, or agents is to change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements, except as prescribed in such agreements or in section 6 of the Act.

Carriers and representatives of the employees are required to give at least 30 days' written notice of an intended change in agreements affecting rates of pay,

rules, or working conditions. Such a notice is commonly referred to as a "Section 6 Notice". Section 6 also requires that the time and place for the beginning of conferences between the representatives of the parties be agreed upon within ten days after receipt of such notice, and that such time be within the 30 days provided in the notice.

## **Mediation**

The Act provides that the parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the National Mediation Board in any of the following cases:

- a. A dispute concerning changes in rates of pay, rules, or working conditions which has not been adjusted by the parties in conference.
- b. Any other dispute which is not referable to the National Railroad Adjustment Board and which has not been adjusted in conference between the parties or for which conferences are refused.

However, the National Mediation Board does not have to wait for a request for aid; it may proffer its service at any time any labor emergency is found to exist. In either event, the National Mediation Board promptly communicates with the parties and uses its best efforts, by mediation, to bring them to agreement.

In every case where a Section 6 notice of intended change has been given, or conferences are being held with respect to such notice, or the service of the National Mediation Board has been requested by either party, or such Board has proffered its service, the rates of pay, rules, or working conditions are not to be altered by the carrier until the controversy has been finally acted upon by the Mediation Board, unless 10 days have elapsed after termination of conferences without any request for or proffer of the services of the Mediation Board.

## **Arbitration**

If the efforts of the National Mediation Board to bring about an amicable settlement through mediation are unsuccessful, the Board endeavors to induce the parties to submit their controversy to arbitration. The Act provides, however, that the failure or refusal of either party to submit a controversy to arbitration is not to be construed as a violation of any legal obligation imposed upon such party by the terms of the Railway Labor Act.

## **NMB Notice That Mediatory Efforts Have Failed**

If arbitration is refused by one or both parties, the National Mediation Board notifies both parties in writing that its mediatory efforts have failed. During the 30 days which follow this written notice, no change (unless the parties agree to arbitration or an Emergency Board is created) may be made in the rates of pay,

rules, or working conditions or established in effect prior to the time the dispute arose.

If a dispute between a carrier and its employees is not adjusted under the foregoing procedure, and should, in the judgment of the Mediation Board, "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service", the Mediation Board is required to notify the President of the United States who may, in his discretion, create a board to investigate and report on the dispute. Such a board, commonly referred to as the "emergency board" is required to investigate the facts promptly and make a report to the President within 30 days from the date of its creation.

Section 10 specifically requires that "After the creation of such a board, and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

## **Appendix C - Special Procedure Under RLA for Commuter Service**

### **Section 9A Of The Railway Labor Act Special Procedure For Commuter Service**

- a. Except as provided in section 510(h) of the Rail Passenger Service Act, the provisions of this section shall apply to any dispute subject to this Act between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Service Corporation) and its employees.
- b. If a dispute between the parties described in subsection (a) is not adjusted under the foregoing provisions of this Act and the President does not, under section 10 of this Act, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.
- c.
  1. Upon the request of a party or a Governor under subsection (b), the President shall create an emergency board to investigate and report on the dispute in accordance with section 10 of this Act. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the date of the creation of such an emergency board.
  2. If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a),

the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

- d. Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.
- e. If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.
- f. Within 30 days after creation of a board under subsection (e), the parties to the dispute shall submit to the board final offers for settlement of the dispute.
- g. Within 90 days after the submission of final offers under subsection (f), the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.
- h. From the time a request to establish a board is made under subsection (e) until 60 days after such board makes its report under subsection (g), no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.
- i. If the emergency board selected the final offer submitted by the carrier, and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act.
- j. If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h), the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

