

### 5.3.1 Compensation Defined

Please refer to [FOM-I-208](#) for a list of items or earnings that may be considered as compensation and for an explanation of railroad compensation under the RR Act.

#### 5.3.10 Definition of Lag Period

Lag is the time between the last month for which service and compensation has been reported to the RRB and, if it is later, the employee's date last worked. The period from January of the current year through the date last worked is always a lag period. However, the preceding year may also be included in the lag period. This is because the annual service and compensation report for the preceding year is not posted to the Employment Data Maintenance (EDM) until around May 1 of the current year. Therefore, the lag period for applications filed before May can extend from January of the preceding year to the last date worked in the current year.

Use the following schedule to determine the lag period when lag is required for eligibility:

Date on Which Lag Report Is Requested	Month Lag Period Begins
Before May 1	January of preceding calendar year
After April 30	January of current calendar year

Lag service and compensation must be reported to the RRB by the last day in February following the year in which the employer paid the compensation. However, the service and compensation may not appear on SEARCH until May of the year following the year in which the employer paid the compensation.

Do not release a RRAILS Form G-88A.2 or AA-12 after April 30 for lag service and compensation for the previous year.

#### 5.3.11 Requesting Lag Service From Employers in Retirement Cases

Refer to [FOM-I-1720 Form G-88A.2 procedure](#).

#### 5.3.12 Requesting Lag Service Required for Eligibility from Employers in Survivor Death Cases

When lag railroad service months are required to establish eligibility to a survivor annuity or lump-sum death payment, the RRB field office will fax the Form AA-12 *Notice of Death and Statement of Compensation* to the employer (see [FOM-I-209.3](#)). Once the

AA-12 is received in Headquarters, the SBD examiner will enter the required railroad service months on the SURGE Lag Data/Prior Service screen.

When this wage record is received, pay the case as a final cert. Do not enter a "1" in AWARD TYPE on the General Award Data screen to indicate that a partial payment is being made. Do not control for lag.

If lag is not required for eligibility, no action is required. The lag will be added in the annual SAIL program as explained in [RCM 5.3.15](#).

### **5.3.13 Acceptability of Signature on G-88A.1 Listings, G-88A.2 and Form AA-12**

RBD/SBD should accept a corrected G88A.1 listing, a Form G-88A.2 or a Form AA-12 which has been certified in the "Certification" item, if otherwise complete, unless the certification has been made by an individual who obviously was not in possession of the compensation data reported. RBD/SBD will assume that any RRB contact representative or employer division officer or other official at a higher level would be in possession of the compensation data. Each railroad employer and employer organization has designated one or more individuals as RR contact officials for certifying information to the RRB.

### **5.3.15 Lag Adjustment Programs**

In both retirement cases and survivor cases, the lag earnings are posted to the EDM as part of the RRB's annual reporting process. At the beginning of each year, railroads report service and compensation for the previous year on their Form BA-3a *Railroad Service and Compensation Reports* (year-end reports).

#### **5.3.15.1 Retirement Annuities**

Between 1989 and 2005, a yearly program called Retirement Adjustment to Include Lag (RAIL) was run to identify retirement cases which needed to be recertified to include the railroad lag earnings. The annual RAIL mass adjustment is explained in [RCM 6.8.44](#).

Beginning in 2006, the system to Recalculate for Service and Compensation Updated to EDM (RESCUE) includes railroad lag earnings in retirement annuities. RESCUE is run quarterly.

#### **5.3.15.2 Survivor Cases**

Prefix "A" cases, which may require an adjustment for lag, were identified by the RAIL mass adjustment (see [RCM 6.8.44](#)) between 1989 and 2005; beginning in 2006, prefix "A" cases are identified by RESCUE. STAR referrals are created for any survivor "A" annuity that has a change in PIA 1 or total service months.

In initial “D” cases, the SURPASS award letter automatically includes code paragraph 400S if the employee could have lag service. It explains that the award is based on the last year-end reported railroad earnings and that the rate will be adjusted if additional earnings are reported. If you must suppress the award letter, include this paragraph in the ALTA letter. The insert is the year preceding the lag year.

Between 1998 and 2005, a yearly program called Survivor Adjustment to Include Lag (SAIL) was run to identify survivor cases which needed to be recertified to include lag earnings. Cases were selected if the employee’s date of death was in the lag year and a survivor had been paid final. Wage records were obtained from SEARCH and loaded to SURPASS. “SIS LG” referrals were loaded to STAR.

Beginning in 2006, RESCUE identifies “D” cases that need lag included in the survivor rate. Wage records are obtained from SEARCH and are loaded to SURPASS. “SPR RF” referrals are loaded to STAR.

### **5.3.16 SBD Examiner Action for Lag Cases**

“SPR RF” cases will be worked using slash folders. When one is assigned to you, take the following actions:

- A. If you do not have a wage record, it should be traced following the procedure given in [RCM 8.1 Appendix D](#).  
  
If the ALT PIA may apply, both wage records must be available before taking further action.
- B. If the previous wage record is still in SURPASS and there is no change in the PIA’s or Employee tier 2, no action is necessary. Close out the USTAR referral.
- C. If either the previous wage record is unavailable, or the PIA and/or tier 2 changes, recertify the annuity from the OBD.
  1. If the rate increases and tolerance does not apply, code the USTAR referral for authorization. Include code paragraph 1817S on the ALTA letter. This paragraph explains that newly reported service and earnings are being used to increase the rate. The insert is the lag year.
  2. If there is no rate increase, delete the award and close out the USTAR referral. Do not release a letter to the annuitant.
  3. If the rate increase is less than \$1.00 a month, delete the award and close out the USTAR referral. Do not release a letter to the annuitant.
  4. If the rate decreases, the case should not be reopened. Delete the SURPASS award and close out the STAR referral. Do not release a letter to the annuitant.

## 5.3.17 Deemed Service Month(s) Project

### 5.3.17.10 Background

In May 1998, a process was developed to identify annuitants credited with an additional service month(s) due to manual deeming. A mechanical RAIL G-90 with tier 1 and tier 2 calculations was provided. Additional information regarding deemed service months may be found in [RCM 5.2.44](#).

In 2006, RESCUE assumed responsibility for identifying cases in which additional service months are added to an employee's account through deeming. Any change in service months, whether through employer reporting or deeming, will activate the case in RESCUE.

Deemed service months are intended to benefit annuitants, and including them is advantageous to the annuitant in most cases. The additional service month(s) usually increases the tier 2 amount and may also make the annuitant(s) eligible for additional benefits (such as providing sufficient months for a supplemental annuity). However, in some situations, adding deemed service months can cause a decrease in the annuity rate.

In order to avoid making annuity adjustments that are not advantageous to the annuitant, the following policy decision was made:

If an annuitant's service and compensation for a given year has already been considered in the annuity computation and manual deemed service months are later posted, those service months will only be considered in the annuity computation if it is advantageous to the annuitant.

### 5.3.17.20 When is Deeming Done Manually?

Manual deeming is necessary when there is insufficient information at the time the employer posts earnings on EDM, i.e., date rights relinquished. Refer to CCOM chapter [6, Deemed Service Months](#), for further details.

### 5.3.17.30 Selection process

Cases are selected on the basis of meeting the following criteria.

- Annuity beginning date (ABD) is current year less 2; and
- Resolved deemed service month(s) exists in current year less 2; and
- Tier 2 base rate is changing (increasing or decreasing).

#### **5.3.17.40 Tier 2 Base Rate Increase**

When considering the inclusion of manually deemed service months, you must also consider the impact on PIA 1. It is possible that the reallocation of compensation will cause a decrease in PIA 1. Therefore, if the net result of the manual deeming is a decrease in the annuity rate, then do not adjust the case.

If the net result is an increase in the annuity rate, adjust the annuity from the annuity beginning date.

#### **5.3.17.50 Tier 2 Base Rate Decrease**

Tier 2 base rate typically increases due to the inclusion of an additional service month(s) and is to be adjusted from the ABD accordingly. However, under certain conditions the tier 2 base rate may decrease due to a reallocation of compensation, lowering the high 60 average monthly compensation.

Determine the cause of the tier 2 base rate decrease by comparing the G-90 to the latest G-90 in file. If the tier 2 base rate is decreasing due to the untimely inclusion of deemed service months and no other reason, do not adjust the case. Untimely inclusion of deemed service months is defined as manual deeming - indicated with the letter 'R' outside of column 'O' of the G-90.

#### **5.3.17.60 Deemed Months Needed**

Cases in which manual deeming results in a tier 2 base rate decrease but provides eligibility to a supplemental annuity or establishes entitlement to a more advantageous annuity must be considered. Determine the effect the additional service months will have and provide an email, if necessary, to the appropriate field office explaining the impact. (Email is only necessary if advantage is not apparent or current i.e., supplemental entitlement in future.) Request the field office to contact the annuitant with the information you provided so that the annuitant can make a choice on the handling of their annuity. Adjust the annuity accordingly.

For cases that will not be adjusted include the following statement as folder documentation. 'Deeming resolved resulting in a decrease in tier 2. No adjustment is needed.' Enter administrative finality code '3' on PREH. If a later adjustment results in an increase, remove the administrative code from PREH.

#### **5.3.17.70 Award Paragraphs**

Code paragraph 201A is to be used for tier 2 increase cases. Code paragraph 201B is to be used for tier 2 decrease cases. Refer to [RCM 10.5](#) to view the paragraphs. Include other pertinent paragraphs as needed.

#### **5.3.20 Vacation Pay**

See [FOM1 210](#) for Vacation Pay.

### 5.3.30 Pay for Time not Worked

#### 5.3.30.10 Compensation Based on "Pay for Time Lost"

The term "compensation" includes amounts paid by an employer to an employee for time lost during which time the employee had an employment relation, but was absent from the active service of the employer. An employee is deemed to have been "paid for time lost" whenever any of the following circumstances occur:

- He was paid by an employer, under certain conditions, for loss of earnings as a result of his temporary absence from work due to illness; or,
- He was paid by an employer for an identifiable period of absence from active service, including absence due to personal injury; or,
- He was paid by an employer for loss of earnings, during an identifiable period, as a result of displacement to a less remunerative position or occupation; or,
- He was paid by an employer for an identifiable period for which an employment relation existed after his actual DLW-RR as the result of "dismissal pay" after abolishment of his job or an "early out" agreement. (Under this condition the employee must retain his job rights and receive monthly payments of remuneration over a specified period of time); or,
- He was paid by an employer for loss of earnings as a result of abolishment of the job.

#### 5.3.31 Sick Pay as "Pay for Time Lost"

##### A. Definition

Payments to an employee who is temporarily absent from work due to sickness and disability is credited as "Pay for Time Lost" with railroad service months and regular railroad compensation when:

1. The railroad pays tier 1, tier 2, and SUP ANN taxes for these payments; and,
2. He is carried on the payroll and paid all or part of his regular salary for an identifiable period during which he is considered absent from work; or,
3. His return to service is contemplated, his name is carried on the seniority roster, and he receives payment for an identifiable period when he is absent from work.

The purpose of the payment is to make the employee whole as if he had not lost time from work as a result of injury. This may be accomplished through a wage

continuation plan. The employee receives service months while on the regular payroll. The tier 1 and tier 2 are taxed as regular compensation.

If the RRB field office has not been advised whether or not a specific sick pay salary or wage continuation plan qualifies as "Pay for Time Lost," they should obtain a copy of the plan and forward it to OP-RAC. A request for will be made to the Office of the General Counsel to review the plan and determine if it should be considered "Pay for Time Lost."

#### **B. Effect on RUIA**

The employee is not entitled to unemployment or sickness benefits under the Railroad Unemployment Insurance Act (RUIA) while receiving payments under this type of plan.

#### **C. Effect on Employee Annuity**

An annuity under the RR Act may not begin earlier than the day following the last date for which the "pay for time lost" is received, because the employee is carried on the payroll and receives credit as if he were still performing railroad service. This type of pay should be entered as "Pay for Time Lost" on the Application AA-1 or Initial Claims (IC) screens.

For example - The Union Pacific pays a "wage continuation benefit" to employees who have an "on the job injury." The employees remain on the payroll and receive their regularly scheduled paychecks. These payments are considered to be "Pay for Time Lost."

### **5.3.32 Sick Pay as "Miscellaneous Compensation"**

#### **A. Years Prior to 1982**

For years prior to 1982, sickness payments made pursuant to a company plan which provides for sickness and for accident disability or by labor agreements (i.e. plans providing for the accruing of sick leave based upon length of service), are not considered to be compensation.

However, if the employee "cashed in" his unused sick days, that payment was considered Tier 1 and Tier 2 compensation.

#### **B. Legislation that Changed Creditability of this Type of Sick Pay**

The Railroad Retirement Solvency Act of 1983, changed the definition of compensation to include any payment subject to tier 1 employment taxes. Sick pay had become subject to tier 1 taxes effective 1-1-82, as a result of the 1981 Social Security Act Amendments, and the corresponding amendment to the RR Tax Act. Since the Railroad Retirement Act was not amended at that time to include sick pay in the definition of compensation, employees receiving sick pay



were being taxed without receiving credit. The amendment to the RR Act in 1983 extended the retroactivity of the tier 1 compensation credit to 1-1-82 (limited to the first six months after the DLW-RR).

### **C. Changes Effective January 1, 1982 or Later**

Effective with payments for January 1, 1982, or later, sick pay which is payable under a plan or agreement" which provides for sickness or accident disability, for up to six months after the actual date last worked, will be reported as "miscellaneous compensation." The "miscellaneous compensation" credit for sick pay is used solely to increase the earnings used to compute tier 1 of an employee, spouse, or survivor annuity or to increase PIA #9 for the Retirement O/M computation.

For example, The Atchison, Topeka and Santa Fe Railway Co. (BA 1702) has a short term disability program for officers and exempt employees. These payments are made for the first six months after the DLW-RR and are creditable as Tier 1 miscellaneous compensation. They do not provide RR service months. The ABD may be as early as the day after the DLW-RR.

The Atchison, Topeka and Santa Fe Railway Co. also has a long term disability program for salaried employees that meets the definition of this type of sick pay. However, since payments under this plan do not begin until the seventh month after the employee's actual date last worked, they are not creditable as tier 1 sick pay. These payments have no effect on the railroad retirement annuity.

The items 53-54 on form AA-1 are used to resolve any problems concerning the employee's sick pay. Question the employee carefully about sick pay, because it is difficult to determine the nature of the payment. If the payments are actually "Pay For Time Lost," the payments should be reported in the "Pay For Time Lost" items, not in the sick pay items. The RRB field office or the employee may have to contact the employer to determine the true nature of sick pay.

### **D. When Sick Pay is Not Creditable as Miscellaneous Compensation**

Sick pay is not creditable as Tier 1 compensation if:

1. Sick pay is paid under a worker's compensation statute; or,
2. Sickness payments were made after the expiration of 6 calendar months after the employee last worked for the railroad employer.

### **E. How Sick Pay is Reported to the RRB**

The employees are not carried on the railroad's payroll. The payments are not based on all or part of the employee's regular salary. These payments may be made from any source (including an insurance company as a third party payee,



sickness insurance (SI) benefits under the Railroad Unemployment Insurance Act (RUIA) and Sickness Insurance, or benefits from a nongovernmental plan).

RUIA sickness insurance payments are reported to the EDM as tier 1 compensation, under BA 1008. Two third party payers, Benefit Trust (BA 1005) and Provident (BA 1004), have also been assigned BA numbers, and make reports to the RRB.

Railroad employers have been instructed to report miscellaneous compensation on form BA-3, "Annual Report of Creditable Compensation - ERS."

If the employee had contributed to the sickness or accident disability plan, the portion of the payments attributable to his contributions are excluded. Payments under a worker's compensation law are also excluded.

## **F. Definition of Plan or Agreement and Nongovernmental Plans**

1. Plan or Agreement - The term "plan or agreement" for miscellaneous compensation means the payments are based on a plan or agreement established by an employer which makes provision for his employees generally or for a class or classes of employees, and their dependents, on account of sickness or accident disability. These employees are no longer carried on the regular payroll. However, payments for sickness or injury are paid for a period during which the employee is absent from work on account of a personal injury or sickness.

A "sick pay" plan or agreement has these characteristics:

- It covers a specified group of employees and may or may not be the result of a collective bargaining agreement.
- Benefits may be paid by a contract the employer has with an insurance company, or from a special fund set up by the employer, or out of the employer's general revenue.
- Benefits are not based on the employee's salary and may continue for as long as the employee is absent from work on account of sickness or injury, or they may be limited to a certain number of days or weeks.
- The plan may include benefits for payments when the employee is absent from work for reasons other than personal injury or sickness.

2. Nongovernmental plan - A nongovernmental plan is defined in the RUI Act. It is a formal, written plan under which the employee has an enforceable right to benefits for days on which he is absent from work on account of sickness or injury. A nongovernmental plan has these characteristics:

- The plan covers a specified group of employees and may or may not be the result of a collective bargaining agreement.
- Benefits may be paid by a contract the employer has with an insurance company, or from a special fund set up by the employer, or out of the employer's general revenue.
- Benefits are not based on the employee's salary and may continue for as long as the employee is absent from work on account of sickness or injury, or they may be limited to a certain number of days or weeks.
- Benefits under the plan must be reduced by sickness insurance benefits under the RUIA.

#### **G. Effect on RUIA**

The only difference between a "plan or agreement" and a "nongovernmental plan" is that sick pay plans or agreements do not have to be reduced for SI, and the nongovernmental payments do have to be reduced. Accordingly, a nongovernmental plan is, by definition, a sick pay plan. The reverse, however, is not true unless a sick pay payment is reduced for SI.

A table of employers covered under the Benefit Trust and Provident plans can be found in the RUIA "Adjudication Instruction Manual, [Article 9, Appendix F](#)." That appendix also lists other sick pay plans on file at the RRB. However, some of these employers may carry the employee on the payroll for a short time before the miscellaneous compensation begins.

#### **H. Effect on Employee Annuity**

Credit is not given for railroad service months or for tier 2 compensation. The date last worked (DLW) and the ABD are not affected, since service months are not credited.

#### **I. Effect of Miscellaneous Compensation on Work Deductions**

The miscellaneous tier 1 compensation, up to the tier 1 yearly maximum, is based on an identifiable six month period for which sickness benefits are payable. However, the miscellaneous compensation is actually be credited as a lump-sum to the DLW-RR. The earnings do not count for work deductions in retirement or disability annuities, because they are attributable to the date last worked for work deduction purposes, since the employment relationship has terminated when these benefits were paid. The miscellaneous compensation is not added to PIA 17, which is the amount that is not subject to Tier 1 work deductions. Therefore, the miscellaneous compensation is included in the tier 1 work deduction component (PIA 2) as if it were "wages".

### 5.3.33 Personal Injury Payments

#### A. When Considered Pay for Time Lost

A payment made to an employee by his employer on account of a personal injury is to be treated, subject to the limitations stated below, as compensation paid for time lost if it included pay for time lost and was paid for an identifiable period of absence from the active service of the employer.

EXCEPTION: Payment under a worker's compensation law or public disability is not RR Act compensation paid for time lost. These benefits are paid under a state or Federal Worker's Compensation law or plan. Therefore, no part of such payment is creditable as compensation. RRA annuity payments are reduced when the employee is also entitled to periodic worker's compensation pay or a public disability benefit.

#### B. Determining Period of Time Lost

An employee will be deemed to have been paid for the period of time lost specifically identified in the agreement of settlement. If the period of time lost was not specifically identified, the period between the time of the injury and the time the employee returned to work is to be regarded as the period of time lost if:

1. The personal injury payment was made after the employee returned to active employer service; or
2. The employee returned to such service within 6 months after the date on which the payment was made.

If the period of time lost was not specifically identified, and the employee did not return to railroad employment, the total amount of the settlement agreement should be allocated to the DLW-RR.

If a settlement agreement is pending, the employee is eligible for an annuity, and the employee does not need additional railroad service months, encourage the employee to finalize the settlement agreement as a lump sum payment credited to the DLW-RR.

The period for which a payment for time lost on account of personal injury is made need not be considered as finally settled at the time the payment is made. A change in the period made at a later date may be given effect so long as the employee and the employer agree upon the change, nothing unreasonable is found in the new allocation, and an amended settlement agreement is prepared. The employer also must file a corrected earnings report for the employee within four years. This change may affect the annuity beginning date.

### **C. Amount Creditable**

When a payment made by an employer with respect to a personal injury includes pay for time lost, the total amount is to be considered as pay for time lost unless, at the time of payment, a part was specifically apportioned to factors other than time lost.

Whenever such an amount was, at the time of payment, apportioned to factors other than time lost (such as for the purpose of obtaining release from future liability, medical and hospital expenses, damages for physical or other impairment, etc.), only that part of the amount not so apportioned is creditable as pay for time lost.

The portion of a personal injury payment which represents pay for time lost is to be allocated, subject to the maximum creditable for a month, to the month or months falling in the period treated as the period of time lost. Beginning with 1985, an employee may receive tier 1 credit for "pay for time lost" subject to the annual tier 1 maximum. Tier 2 credits are still subject to the tier 2 monthly maximum in the period of time lost.

When pay for time lost is allocated, the RRB will accept the allocation if it relates to the employee's normal monthly pay. Effective

November 28, 1984, a reasonable relationship to an employee's normal monthly pay is defined as ten times the employee's daily pay rate. Prior to that date, the minimum amount that could be credited for a month of pay for time lost was \$100.

### **D. Developing Personal Injury Payments**

"Pay for time lost" due to personal injury is usually reported to the RRB by the employer in their year end earnings reports. However, when the period of "pay for time lost" due to personal injury is in the lag period, and the applicant reports the settlement or pending settlement, in Section 7 on Application AA-1, the "pay for time lost" for an identifiable period will probably affect the annuity beginning date.

The RRB field office should secure a copy of the settlement agreement, including the following information:

1. The amount and date of the payment; and
2. The reason for the payment; and
3. The beginning and ending dates of the period of absence.

A photocopy of the settlement papers should be attached to the application package.

NOTE: For a disability application, two copies of the settlement are required. One should accompany the application package to DPS, the other should be sent to "RBD-RIS - Supervisor."

If the settlement involves compensation only, the employee will receive credit when the railroad submits its annual report. The annuity will be adjusted in the subsequent RESCUE quarterly run.

If the settlement involves additional service months after the annuity beginning date, a copy of the settlement should be forwarded to RBD to determine if annuity beginning date should be changed.

### **5.3.34 Separation, Displacement and Similar Allowances**

#### **A. General**

Separation, displacement, termination, and similar payments that result from abolishment of an employee's railroad job are creditable as compensation under the RRA. Under many separation and displacement agreements, an employee whose job is abolished is given a choice between:

- Retaining his job rights and receiving monthly payments of compensation over a specified period of time; or
- Giving up his rights as an employee and accepting a separation allowance.

Employers may refer to these allowances by many different names, such as separation, dismissal, termination, severance, displacement, reduction in force, or coordination allowances. For purposes of this section, the different allowances or payments will be referred to as either a "separation allowance" or "monthly compensation payment," depending upon whether rights have been relinquished or retained by the employee. Regardless of the name the employer gives the payment or allowance or how it is reported by the employer, the handling to be given the payment under the RRA will depend upon whether the employee has relinquished or retained his job rights.

#### **B. Description and Effect of "Monthly Compensation Payments"**

"Monthly compensation payments" are payments of remuneration to an employee who retains his job rights during the course of the monthly payments. Such payments may be made to an employee whose job was abolished or who was displaced to a less remunerative position or occupation. An example of a dismissal payment is a monthly displacement allowance paid under Title V of the 1973 Regional Rail Reorganization Act. Since an employee who elects to take "monthly compensation payments" is getting credit for each month, his annuity may not begin until after the end of the period for which payments are made.

The payments are "pay for time lost" under the RR Act and creditable as service and compensation.

### **C. Description and Effect of "Separation Allowance"**

A "separation allowance" is a payment of remuneration to an employee who has relinquished his job rights. The payments may be spread over a period of time and reported for that period, or the allowance may be paid in a lump sum and reported for the month the separation is effective. (It is up to the employer to decide whether the separation is effective on the DLW or DRR.)

Regardless of whether the separation allowance is paid in a lump sum or paid in a series of installments, it may not be used to credit the employee with railroad service for months following the month in which he was separated from service by relinquishing his rights. For computational purposes, tier 1 may be credited up to the annual maximum for the year last worked and tier 2 may be credited up to the monthly maximums based on the number of actual or deemed service months in the year last worked before the employee relinquished his rights.

EXAMPLE: An employee's DLW is 5/31/86. He was on leave of absence for the months of January through April 1986. He returned to work in May 1986. He accepts a separation allowance which is also effective 5/31/86. He files for an annuity to begin on 6/1/86. His actual earnings for 1986 are \$1,500.00. The separation allowance is \$100,000.00 and is credited to May 1986. For 1986, he would be credited with \$42,000.00 (the annual maximum) in tier 1 and \$12,125.00 (5 months at the monthly maximum of \$2,425.00) in tier 2. He receives credit for one actual service month and four deemed railroad service months for 1986.

The employee may be entitled to a refund of his tier 2 taxes deducted from the separation allowance after 1984 that did not yield additional railroad service months. This refund is called a SALSA award.

### **D. Effect on RUIA**

An employee who elects to take "monthly compensation payments" is getting a railroad service month credit for each month, he may not receive RUIA benefits for the period for which payments are made.

A "separation allowance" is a payment of remuneration to an employee who has relinquished his job rights. Separation allowances can affect the payment of RUIA benefits, as under the Title VII program, which is explained in [RCM 5.3.49](#).

### **E. Effect on Employee Annuity**

1. Possible Effect on Current Connection - The requirements for a "deemed current connection" are in [FOM1 225.45](#). In cases where an employee has no option to remain in railroad service, the termination may be

considered involuntary, even if the employee receives a separation allowance or dismissal pay. However, an employee who chooses a separation allowance instead of keeping his or her seniority rights would generally be considered to have voluntarily terminated railroad service. Questionable "deemed current connection" cases are referred to the Office of the General Counsel (OGC). Months creditable as "dismissal pay" will add to the railroad service months used in the "12 in 30" test to extend the period the employee has before the regular current connection test could apply. An employee who chooses a separation allowance will have the "12 in 30" based on the actual railroad service prior to his "relinquishment of rights." In either case, work outside the railroad industry following the 30-month period may break the employee's regular current connection.

2. Effect on Annuity Beginning Date - Regardless of how the employer pays or reports it, a "separation allowance" will ordinarily be credited by the RRB to the DLW-RR. The annuity can then begin on the day after the DLW-RR if the employee is otherwise eligible. However, if the employer considered the separation to be effective in a later month and reported the allowance for that month on the year end earnings report, it will be credited to the date the separation is effective, provided that the employee did not relinquish his rights prior to that date. If a "separation allowance" is credited in this manner, an annuity cannot begin until the day after the date the separation was effective.
3. Separation Allowance for Work Deduction Purposes - Under the RRA, separation allowances are considered to be earnings for work deduction purposes. In regard to payment of an annuity, the RRB has determined that a separation allowance will be deemed to have been paid for services in the month last worked (DLW-RR) regardless of when payments are actually made. Employees who have no other employment after their annuity beginning date (ABD) will not lose any portion of their annuity payments, as work deductions would not apply in the ABD month in this situation.

Some separation allowances spread out payments over a period of years. As stated above, the entire allowance would be credited to the DLW-RR. Annuitants who continue to receive payments after the year they last worked will not be subject to work deductions in the years following the ABD year based on those payments.

## **F. Recovering a SALSA Overpayment**

1. Determine the amount of time that has elapsed for the SALSA overpayment by comparing the SALSA-LST-ACCT-DT (voucher date) field to the SALSA-AMT-CHNG-ACCT-DT (calculation date) field on the 3050 PREH record.



2. Using the chart below determine if the SALSA overpayment is reopenable.
  - If yes, continue to step 3.
  - If no, skip to step 10.

3. Determine if the SALSA overpayment has been previously handled by another unit by reviewing the SALSA-PYMT-SOURCE-CODE field of the 3050 PREH record or the remarks section of Universal STAR.
4. Check the following Employee Data Maintenance (EDM) screens: Employee Service & Earnings Totals (EDMID103), the Creditable Service & Earnings Years Totals (EDMID104), and the Service & Earnings Yearly Ledger (EDMID105) to determine if deeming is applicable.

**NOTE:** If deeming is applicable, reconcile in accordance with [RCM 5.2.44](#) before continuing to step 5.

5. Review the SALSA Alert Flag field of the 3050 PREH record, or any new and material evidences received from the employee as defined in RCM 6.2.30 to determine if a SALSA payment is due the employee.

**NOTE:** A code of “1” in the SALSA Alert Flag field means that a separation report has not been correctly processed or has suspended in our records.

If a code exists or new and material evidence is applicable:

- Send a G-563 to CCU requesting a calculation of the SALSA benefit.
- Compare the new calculated amount to the old calculated amount.
- Withhold any accrual to reduce the SALSA overpayment.
- Continue to step 6.

If no code exist or no new and material evidence is applicable:

- Continue to step 6.

6. Compare the service months on the 3300 PREH record to the total service months on EDMID103 screen to determine if the months used to calculate the employee’s annuity matches the months reported on the EDM system.

If the service months do not match:

- Request a new G-90 using the G-60 PC program.

- Upon receipt of the G-90, determine if the case can be re-opened to make the adjustment to the annuity.
- If the case is re-opened, and the adjustment results in an accrual, withhold the accrual to reduce the SALSA overpayment.
- Continue to step 7.

If the service months match:

- Skip to step 9.
7. Recalculate the SALSA overpayment amount by subtracting the SALSA-CUM-PYBLE-AMT from the SALSA-PD-TTD-AMT on the PREH 3050 screen. Reduce the result by the accrual used from step 6.
  8. Post the SALSA overpayment to the PARS system to the PARS system (via G-205/G-206). Prepare and release an overpayment letter accordingly.
  9. Remove the SALSA Alert Flag from the 3050 PREH record using the PREH online correction facility, if applicable.
  10. Change the SALSA-PYMT-SOURCE-CODE in the 3050 PREH record to a "9", if necessary.
  11. Complete the remarks section and close out the Universal STAR record.

### SALSA REOPENING CHART

	< 60 days	60 days to 4 year	Over 4 years
RRB Error	Yes	No	No
No RRB Error	Yes	Yes	Yes *

RRB error indicates that the error was either clerical or adjudicative and evidence of error should be apparent.

NO RRB error indicates that the change in service & compensation was a correction by the railroad under Part 211-16 of the Code of Federal Regulations.

\*Prospectively, but only if the change results in an increase ([RCM 6.2.7](#)).

## **G. Special Situations**

Occasionally there may be a situation that does not clearly fit the normal criteria for crediting compensation. Usually these are one-time only occurrences for which special rulings are made. These rulings are generally not meant to set any precedents or be the basis for any changes in procedure.

### 1999 and 2000 CSX Buyouts

In 1999 and 2000 a number of disability annuitants elected voluntary separation payments (buyouts) from the CSX Corporation. These elections had a number of implications for the annuitants.

1. By electing this buyout, the annuitant relinquished seniority rights.
2. Per Legal Opinion 99-18, the buyout amount was creditable as compensation in the month elected and election of the buyout constituted compensated service.
3. Because election of the buyout constituted compensated service, no annuity was payable in the election month, causing the annuitants to be overpaid for that month.

For a complete background on these specific cases, refer to [FOM1 Art. 3 App J](#).

## **5.3.35 Payments upon Reinstatement after Layoff**

### **A. Payment for Lost Earnings**

A payment made to an employee reinstated after suspension or discharge, in settlement of a claim for back pay for the period during which he was not in active service, constitutes compensation for time lost. Payments upon reinstatement after layoff are to be credited proportionately to the months the employee was held out of service.

### **B. Nominal Sum**

A nominal sum paid to an individual who was held out of the service of a covered employer and subsequently reinstated under an agreement of settlement which

provided for the payment of a nominal sum in consideration for the execution of a release, is not creditable as compensation.

### **5.3.40 Bonus Pay**

Different types of bonus payments, such as safety, incentive, fuel conservation, perfect attendance, superior performance and suggestion awards, constitute creditable compensation because they are payments made in consideration of services in addition to that which ordinarily are given.

If an employee is awarded shares of company stock as a bonus or in lieu of some earnings, the monetary value of the shares at the time of transfer is considered creditable compensation.

### **5.3.41 Stock Options**

Refer to [FOM 212.2](#)

### **5.3.42 Profit Sharing/Loss Sharing**

Employees who receive more or less than their regular earnings due to profit or loss sharing plans, are credited with and taxed on the actual amount received. Payments made under a profit sharing plan are creditable compensation.

### **5.3.43 Holiday Pay**

Holiday Pay or Birthday Bonus is creditable compensation. In addition, service may be credited for the month of the holiday or birthday.

### **5.3.44 Productivity Fund Payments**

#### **A. General**

Some railroad employers have special compensation funds that are designated as "productivity savings funds." Payments are made under cost-containment plans where distribution is made to employees for working in such a way to reduce costs. Payments are usually made once a year in a lump-sum, as a special payment for extra productivity.

Distributions from a productivity sharing savings trust fund are creditable compensation under the RRA.. The compensation is considered earned in the month they are deemed paid.

Example: A five man crew agrees to operate as a four man crew. The pay that would normally be paid to the fifth man is placed in the productivity fund. At the end of the year the money is distributed to the employees.

However, the month to which the payments are credited varies according to the employer. Conrail credits a productivity fund payment to December of the year preceding the year in which payments are made. The compensation is reported to the RRB as an adjustment in the previous year's record. The Burlington Northern Railroad Co. (BN) has separate funds and BA numbers for the Burlington Northern Region Productivity Fund (BA No. 1006) and the Frisco Region Employee Productivity Fund (BA No. 1007). The BN reports productivity fund payments at the end of the year in which payments are made; compensation will be reported for either March or October of that year.

In most situations, the productivity fund payment will be credited to a month for which the employee has already received credit for a month of service. The productivity fund payment may increase the amount of compensation credited for that month, unless the employee had maximum creditable earnings.

**B. Effect on RUIA**

Although creditable as RUIA compensation, based on coordination or proration with the employer, the payments do not usually yield additional RUIA compensation credit.

**C. Effect on RR Annuity**

The annuity beginning date will not be affected. If payment is made after the employee's actual last day worked, the employer's year end report should be corrected to credit the payment to the last day worked.

### **5.3.45 Back Pay**

Back pay is a retroactive wage increase. Like other compensation, back pay may be creditable for the month compensation is paid or for the period earned. Also, like other compensation, if back pay is reported for the month paid, and the employee makes a timely request that it be allocated instead to the month(s) earned, the employer must submit an adjustment report accordingly.

Service should not be reported for the month the back pay was paid, unless service is otherwise creditable for that month. In the case of a retroactive wage increase, it is assumed that service has already been credited based on the initial wage payment prior to the increase.

### **5.3.46 Purchase of Employee Benefits**

The payment to an employee for the termination or "purchase" of an employee right or benefit, such as seniority rights, profit sharing rights, sick benefits, etc., is creditable compensation.

### 5.3.47 Reimbursement for Expenses

Reimbursement for expenses incurred in the discharge of the duties of an employee may not be credited as compensation unless the value of the expenses was agreed upon in advance of the services as remuneration, in whole or in part, for services rendered. Compensation that includes reimbursement for expenses incurred by an individual in the course of his employment is to be credited only to the extent of the net compensation earned for personal services rendered.

### 5.3.48 Tips

Generally, the RRB has looked to the treatment the Internal Revenue Service (IRS) accords similar payments under the Railroad Retirement Tax Act (RRTA) in determining whether certain payments are compensation under the Acts administered by the RRB. Tip earnings of \$20.00 or more per month are creditable as tier 1 and tier 2 compensation and are to be included in the annual report of service and compensation. Tips are not subject to the RUIA contribution. Tip compensation is subject to employee Medicare and tier 1/tier 2 taxes but tax liability for tips does not extend to employers. If the employer is reporting tip income to the IRS under the Tip Rate Alternative Commitment (TRACE) program or the Tip Rate Determination Agreement (TRDA), the total amount should be reported to the RRB as creditable compensation.

### 5.3.49 Payments under Title VII of Regional Rail Reorganization Act

A separation or subsistence allowance paid under Title VII of the Regional Rail Reorganization Act of 1973 was creditable as service and compensation and was reported under the Title VII BA number (1002). An employee who received benefits under Title VII may have been entitled to an extra month of compensation and/or railroad service. This compensation and/or service could only have been allocated in certain ways.

A month of service was credited to the month the employee filed for Title VII benefits when (s)he did not work in the railroad industry that month. If the employee worked in the railroad industry that month, no service month was credited based on Title VII filing.

Compensation was allocated to the month the employee filed for Title VII benefits up to the tier 1 and tier 2 maximum amounts. Compensation was allocated to the month of Title VII filing even if the additional month of service could not be credited for that month. However, if the employee already had maximum compensation, no additional compensation was added.

#### A. Effect on RUIA

RUIA payments did not begin to accrue until the Title VII monthly subsistence payments ended or the amount of RUIA payments equal to the Title VII separation allowance was withheld.

**B. Effect on RR Annuity**

Title VII payments did not affect the payment of a railroad retirement annuity. The only consideration is that an employee filing for a Title VII subsistence allowance should not file a retirement or disability annuity application before he files for the Title VII payment.

**5.3.50 Pension Payments by an Employer**

Pension payments made by an employer without expectation that the employee would render services therefore but merely to supplement an annuity or pension for which the employee might qualify, do not constitute compensation.

**5.3.51 Military Service**

Military service may be creditable as either wages or railroad compensation, as explained in [RCM 5.4](#). If the military service is creditable as compensation, the amount of compensation is as follows:

**A. Before 1968**

The amount of compensation credited is \$160 a month for each month in which the employee was in creditable military service before 1968; or,

**B. Before 1975**

The amount of compensation credited is \$260 a month for each month in which the employee was in creditable military service after 1967 through 1974; or,

**C. 1975 or Later**

The amount of compensation credited is the actual amount for the military service basic pay that would be creditable as wages if the military service were used as wages.

Where the employee is credited with military service as compensation for a month in which he has other creditable compensation, the military service compensation is added to the other compensation up to the tier 1 and tier 2 maximum.



## **5.3.60 Compensation for Service to Local Lodge, Division of Railway Labor Organization or as Employee Representative**

### **5.3.60.10 Local Lodge Compensation**

#### **A. Before 1937**

Compensation earned before 1937 in the service of a local lodge or division of railway-labor organization employer, is creditable if the service for which it was performed is creditable ([see Appendix A](#) of this chapter).

#### **B. After 1936 and Before 1975**

Compensation earned after 1936 in the service of a local lodge or division of a railway-labor-organization employer is disregarded for any calendar month in which it is less than \$3 except that such compensation is creditable if:

- It was earned between 12-31-36 and 4-1-40; and
- Taxes were paid on the compensation before 7-1-40, under the RRA.

#### **C. After 1974**

Compensation earned after 1974 in the service of a local lodge or division of a railway-labor-organization employer is disregarded for any calendar month in which it is less than \$25.

## **5.3.61 Compensation for Insurance Commissions**

Commissions paid to the secretary-treasurer of a local lodge or division of a railway labor organization employer for collection of insurance premiums are creditable as compensation, even if the commission is less than \$25 for a calendar month.

## **5.3.62 Waiver or Refund of Organization Dues**

A waiver or refund of organization dues is creditable as compensation only if there is evidence showing it was intended and accepted as the discharge of an obligation of the organization to compensate the employee for his services.

An amount waived or refunded solely in consideration of membership is not creditable as compensation even though the waiver or refund is made by reason of performance of valuable services to the organization.

A waiver or refund made solely as a courtesy or honor cannot be credited as compensation.

If the dues waived include additional elements such as insurance premiums which the employee would normally have to pay, the amount waived may constitute compensation if the value has been agreed upon as remuneration for service rendered.

Designation of a waiver or refund as a gratuity or by any other term which would normally indicate that the waiver could not be considered as compensation, is not controlling. The facts in each case are to be considered on their merits.

### **5.3.63 Services Rendered to a General Committee of a Railway-Labor-Organization Employer**

When a person acts in the capacity of a general or assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer and:

Where the employee is credited with military service as compensation for a month in which he has other creditable compensation, the military service compensation is added to the other compensation up to the tier 1 and tier 2 maximum.

- His office or headquarters is located outside the United States, and
- The individuals represented by the general committee are employees of an employer not conducting the principal part of its business in the United States,
- Only that proportion of his remuneration may be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of the general committee bears to the total mileage under its jurisdiction. If the mileage formula is inapplicable, RRB may adopt a different formula.

If application of the prescribed mileage formula or any other formula prescribed by RRB would result in compensation of less than 10% of the remuneration for this service, no part of the compensation is creditable.

Regardless of the place of performance, all remuneration for general committee service is as creditable compensation if the employee of the general committee represents a local lodge or division whose headquarters is in the U.S., or substantially all the employees represented by the general committee are employees of an employer conducting the principal part of its business in the U.S.

### **5.3.64 Delegate Service to a Convention of a Railway Organization**

Payment for service performed as a delegate to a national or international convention of a railway labor organization on or after 4-1-54 is not creditable compensation unless the person who rendered such service had also rendered other types of service that may be included in his years of service.

Effective October 4, 1994, the RRB adopted a new policy governing the treatment of remuneration paid to delegates for attending labor union conventions or similar meetings. The RRB considers convention delegates paid by the union not to be employees of the union because the delegate is not subject to the direction and control of the union while attending the convention, other than being subject to the conventions' rules of conduct or procedure. The union lacks the authority to direct delegates' actions since, by their votes, delegates can remove incumbent officers of the national.

What determines if a payment is compensation is not that the delegate received the payment at the national convention or other meeting; it is that the delegate is under the direction and control of the union when acting as a delegate. Consequently, delegate compensation is not creditable or reportable under the RRA or the RUIA.

This change in policy is effective with compensation reports submitted to the Board in October, 1994 and later.

Even though no railroad retirement taxes will be withheld, these payments constitute income for purposes of income tax. This would possibly affect railroad retirement annuities as follows:

If an annuitant is receiving a disability annuity and payment for delegate service exceeds the current monthly disability earnings limit (refer to the chart in [FOM1 1125.5.2](#) for the monthly and annual earnings limits), after expenses for attending the meeting, earnings restrictions will apply. Neither the employee nor the spouse is entitled to the monthly payment in which it is earned. Withheld payments will be restored if earnings for the year are less than the current yearly disability earnings limit;

If the annuitant is receiving a railroad disability annuity and payment for delegate service is less than the monthly disability earnings limit after expenses, or if the annuitant is receiving a regular railroad annuity, payment for delegate service will not affect the annuity. However, these earnings should be included in any report of earnings for work deduction purposes under the RRA or SSA.

If an employee attends a national or other convention in a capacity other than that of a delegate, then the payment received may be considered compensation.

If an employee contacts the RRB to report earnings for attending a labor meeting as a delegate, determine if:

- The employee was paid for any services at the meeting, other than acting as a delegate.
- The payment the employee received was not merely reimbursement of expenses.

If both of these criteria are met, the employee performed compensated railroad service. An employee annuitant case will be treated as a return to railroad service. If an employee received only delegate pay, this will be handled as in A or B, above.

### **5.3.65 Employee Representative Compensation**

When a person occupied the position or office of employee representative and was paid remuneration in that office, all remuneration (subject to the tier 1 and tier 2 maximum) is credited as compensation, even though such person performed, either in connection with or outside that office or position, some services which were not directly related to the representation of employees.

When a person did not occupy the position or office of employee representative and earned remuneration in another position or office not related to the representation of employees, the remuneration is not credited as compensation for employee representative service, even though he performed some services, either in connection with or outside his office or position, which were related to the representation of employees.

When a person occupied, concurrently, the position or office of employee representative and another position in some non-employee representative capacity, only the remuneration earned in the capacity of employee representative as employee representative is credited as compensation.

### **5.3.70 Effect of Government Service Employment on Compensation General**

Please refer to [FOM1 214.1](#).

### **5.3.71 Requesting Verification of Government Service Employment**

Please refer to [FOM1 214.2](#)

### **5.3.72 Action Upon Verifying Employment**

Please refer to [FOM1 214.3](#).

### **5.3.73 Indexed AMC**

Please refer to [FOM1 214.4](#)

### **5.3.74 Indexed FAMC**

Please refer to [FOM1 214.5](#)

### **5.3.80 Compensation Records**

#### **5.3.80.10 Evidence of Compensation Paid After 1936**

Evidence of compensation paid after 1936 consists of records of compensation reported periodically to the Policy and Systems – Compensation and Employer Services

(P&S-CESC) by covered employers, including railway labor organization employers and employee representatives, plus supplementary statements of lag earnings furnished by employers and employee representatives on Form G-88A as explained in [RCM 5.3.11](#), or Form AA-12, as explained in RCM [5.3.13](#).

#### **5.3.80.20 Conclusiveness of Compensation Reports**

The RRB's record of the compensation and service reported paid to an employee for a given period after 1936 is conclusive as to the amount. If no compensation was reported for any given period, it is assumed that the employee received no compensation for that period.

However, when an error in the amount of compensation reported or a failure to make a report of compensation is called to the attention of the RRB within four years after the last date on which a compensation report was required to be made, the RRB's records are subject to correction. A request for correction should be reported to CESC. Beginning in 1969, all employers report compensation annually. The term "last date on which a compensation report was required to be made" means March 1 of the year following the "calendar year" during which compensation was paid by the employer.

"Last date" means the last day of the month immediately following the "calendar quarter" during which the final and conclusive determination as to the creditability of the compensation is made by the RRB when the employer failed to make a report (in whole or in part) of compensation paid an employee because the employer or employee believed, based on reasonable grounds appearing in the record, that the compensation involved was not covered by the RRA..

In all other cases, when the record shows a reasonable explanation for the delay in reporting or correcting the amount of compensation, the Chief of CESC may set a last date for the filing of such return.

#### **5.3.82 Employment Data Maintenance**

The Employment Data Maintenance (EDM) system contains the service and compensation for all individuals who have worked in railroad service. The data on the EDM is based on the year-end earnings reports from the railroad employers. This data can be corrected only by corrected earnings reports from the railroad employers.

The EDM will also include wages for employees with 108 railroad service months or more.

The screens for the EDM are explained in [RCM 9.9](#).

### 5.3.83 Requesting Pre - 1951 Compensation Records from CESC

If you need a yearly breakdown of railroad service and compensation for years in the period 1937 through 1950, use Form G-563 (Request to CCU For Service and Compensation Data) to request that information from CESC. They will furnish a yearly breakdown of service and compensation for the period requested.

### 5.3.84 Securing Post - 1950 Compensation Records

To request a compensation record on Form G-90 use G-60 in retirement annuity cases, as explained in [RCM 9.1](#), and the on-line SURGE system in survivor cases, as explained in [RCM 9.11](#).

### 5.3.85 Earnings When Employer Status Disputed

#### A. Coverage Ruling for Missouri Pacific Truck Lines (MPTL) and the Texas Pacific Motor Transport Company (TPMT)

As a result of a 1978 audit by the Internal Revenue Service, the Missouri Pacific Truck Lines (MPTL) and the Texas and Pacific Motor Transport Company (TPMT) were ruled to be employers under the Railroad Retirement Tax Act. The court has reversed the Internal Revenue Service decision and ruled that these employers are not employers under the Railroad Retirement Tax Act. The time limit for an appeal in this case is passed. This means that earnings from the MPTL are wages, not compensation.

The Social Security Administration (SSA) has advised that all wages for the concerned employees have been posted to their Social Security earnings record.

#### B. Compensation for Trans-Mark Services, Inc., and Servitron, Inc.

1. Background - Service by certain individuals with Trans-Mark, Inc. or Servitron, Inc. constitutes railroad service under the RR Act.

In March 1969, the Kansas City Southern Railway Company and its affiliates created two satellite companies: Trans-Mark, Inc. and Servitron, Inc. Both of these companies were largely staffed by former KCSR employees, who had been transferred from the KCSR payroll to those of the satellite companies. Earnings from employment with the satellite companies were reported to SSA as wages.

In July 1976, the General Counsel ruled in L-76-381 that the service of those individuals who were carried on the payrolls of Trans-Mark or Servitron, but who were performing service for the Kansas City Southern and its affiliated railroads, was creditable under the Railroad Retirement Act.

At the time that this decision was made, a number of Trans-Mark and Servitron employees were receiving RR annuities based on their last day carried on the KCSR's payroll. Other individuals were receiving SS benefits based on the "wages" earned while employed by Trans-Mark or Servitron. Therefore any previous RRB determination made based on the incorrect use of this service was re-opened.

Because the crediting of Trans-Mark or Servitron service can affect current connection, SUP ANN closing data and Reg, SUP ANN or spouse annuity entitlement, special care was taken by initial examiners to determine whether this service has been used in these determinations.

2. Field Office Handling - Initial cases involving service with Trans-Mark or Servitron were marked for manual handling. Headquarters checked the folder for evidence that SSA has removed the service in question from their records and terminated or reduced the associated SS benefit. These cases have been corrected.

### **5.3.86 Compensation Erroneously Credited as Wages**

There have been instances when earnings for employees of several railroads were incorrectly posted to their wage records. SSA then erroneously credited wages for earnings that were also credited as compensation by the RRB. Most of these records have been corrected.

RASI (Retirement Adjudication System Initial) is programmed to take in a code from SEARCH in the TRIC reply when a railroad is earmarked for this problem. A referral instructs the examiner to have PIA's computed manually to exclude the earnings incorrectly credited as wages. The additional handling required in these cases means that they will take longer than normal to process.

### **5.3.87 Coordination of Railroad Compensation Reported for Months After the Retirement Annuity Beginning Date**

See [FOM1 207.12](#) for handling service months after the ABD.

### **5.3.88 Supreme Court of the United States Decision Regarding Railroad Stock Options**

The United States Supreme Court decided the case of *Wisconsin Central Ltd., et al., vs. United States* on June 21, 2018. 138 S. Ct. 2067 (2018). The court decision held that non-qualified stock options are not taxable "compensation" under the Railroad Retirement Tax Act because they are not "money remuneration."

See [attachment](#).



### 5.3.88.10 Cases Impacted

Based on initial employer provided data, we have identified and categorized individuals impacted by the Supreme Court decision. They may be employees currently working in the railroad industry, employees who have retired from the railroad industry and are receiving a railroad retirement annuity, or employees who are not currently employed in the railway industry. Based on the amount of their reported earnings in the years in which they exercised their stock options, we have further categorized them as Medicare Only cases, Stock Option Eligible cases, and Non-Qualified Stock Options Only Compensation cases.

#### **Medicare Only Cases**

These cases are those where, according to their railroad employers, the employee's regular earnings met the maximum compensation taxable caps prior to the stock option payments. Therefore, no additional Tier I or Tier II taxes were withheld under the RRTA for the stock option payments. There is no cap for Medicare taxes. Consequently, these employees will be eligible to receive a refund of Medicare taxes paid based on the stock option payments.

#### **Example:**

In 2017, a railroad employer reported a total of \$350,000 in compensation for an employee: \$150,000 salary and \$200,000 due to non-qualified stock options. Maximum taxable earnings for 2017 were \$127,200 for Tier I, \$94,500 for Tier II and there is no maximum earnings threshold for Medicare. Since the employee's earnings of \$150,000 exceeded both the Tier I and Tier II taxable caps, the only RRTA refund for which the employee is eligible is a refund of the Medicare taxes paid based on compensation beyond \$150,000.

If the employee opts to claim a refund, these employees should be advised that doing so will not impact their annuity rate, regardless of whether they are currently receiving an annuity or have not yet started to receive an annuity.

#### **Stock Option Eligible Cases**

These cases are those where, according to their railroad employers, the employee's regular earnings did not meet the maximum compensation taxable caps prior to the stock option payments. Therefore, Tier I and/or Tier II taxes were withheld under the RRTA for the stock option payments, as well as Medicare taxes.

#### **Example 1:**

In 2017, a railroad employer reported a total of \$290,000 in compensation for an employee: \$90,000 salary and \$200,000 due to non-qualified stock options. Maximum taxable earnings for 2017 were \$127,200 for Tier I, \$94,500 for Tier II and there is no maximum earnings threshold for Medicare. Since the employee's earnings of \$90,000 were under both the Tier I and Tier II caps, they may be

eligible for an RRTA refund for the Tier I and Tier II taxes paid on the amounts due to the non-qualified stock options, in addition to a refund of Medicare taxes paid based on compensation in excess of \$90,000.

#### Example 2:

In 2017, a railroad employer reported a total of \$297,000 in compensation for an employee: \$97,000 salary and \$200,000 due to non-qualified stock options. Maximum taxable earnings for 2017 were \$127,200 for Tier I, \$94,500 for Tier II and there is no maximum earnings threshold for Medicare. Since the employee's earnings of \$97,000 were under the Tier I cap but over the Tier II cap, they may be eligible for an RRTA refund for the Tier I taxes paid on the amounts due to the non-qualified stock options, in addition to a refund of Medicare taxes paid based on compensation in excess of \$97,000.

If an inquiry is received from one of these employees, the employee should be advised that we have no information available at this time regarding the impact on their annuity rate – whether they are currently receiving an annuity or have not yet filed for an annuity. In addition, we are unable to calculate any actual or estimated change to their current annuity rate.

#### **Non-Qualified Stock Options Only Compensation Cases**

These cases are those where, according to their railroad employers, the employee's sole source of compensation for the year was non-qualified stock options. These cases were taxed by the employers to the applicable Tier I, Tier II and Medicare required amounts, and therefore eligible for tax refunds under the RRTA on all taxes paid.

#### Example:

In 2017, a railroad employer reported a total of \$200,000 in compensation for an employee, all due to non-qualified stock options. Maximum taxable earnings for 2017 were \$127,200 for Tier I, \$94,500 for Tier II and there is no maximum earnings threshold for Medicare. Since the employee's compensation of \$200,000 was solely based on non-qualified stock options, they may be eligible for an RRTA refund for the Tier I and Tier II taxes paid, in addition to a refund of Medicare taxes paid based on the entire amount of compensation due to the non-qualified stock options

#### **5.3.88.20 Contact Log Entries Identifying Employees**

Individuals eligible for a refund of either Tier I, Tier II and/or Medicare taxes were notified by their employers with a consent letter that asked if they would agree to elect to receive any applicable refund to which they are entitled. Any refunds due will be paid by the Internal Revenue Service. However, before making a decision on whether to elect to apply for a refund, the employees or annuitants may contact field offices and/or headquarters with additional questions. To identify the cases involving the Stock

Options Tax Exchange (i.e., Medicare Only cases, Stock Options Eligible cases, and Non-Qualified Stock Options Only Compensation cases), we entered two distinct Contact Log entries shown below. When an individual calls with a question about the Stock Option letter that was sent by their railroad employer, the Claims Representative should check Contact Log first and take the appropriate action as explained below).

### **Medicare Only Cases**

On November 16, 2018, a Contact Log message was entered for these cases. The message reads, “**Stock Option – Medicare Only Refund. See RCM 5.3.88.**” For Medicare Only cases, advise the individual that taking a Medicare only tax refund has no impact on their annuity rate (if receiving an annuity) or future annuity rate (if they have not filed for an annuity).

### **Stock Option Eligible Cases**

On December 13, 2018, a Contact Log message was entered for these cases. The message reads, “**Stock Option – Stock Option Eligible. See RCM 5.3.88.**” For Stock Options Eligible cases, advise the individual that we have no information available at this time regarding the impact taking an RRTA tax refund will have on their annuity rate (if receiving an annuity) or future annuity rate (if they have not filed for an annuity).

### **Non-Qualified Stock Options Only Compensation Cases**

On December 13, 2018, a Contact Log message was entered for these cases. The message reads, “**Stock Option – Stock Option Eligible. See RCM 5.3.88.**” For Non-Qualified Stock Options Only Compensation cases, advise the individual that we have no information available at this time regarding the impact taking an RRTA tax refund will have on their annuity rate (if receiving an annuity) or future annuity rate (if they have not filed for an annuity).

### **5.3.88.30 Additional Guidance**

Please forward any questions or inquiries regarding the Stock Options Tax Exchange to the **P&S Inquiry Group Mailbox**. In the Subject line, please insert “**Stock Options Tax Exchange -**” and identify whether it is a “**Medicare Only**”, “**Stock Option Eligible**”, or “**Non-Qualified Stock Option Only**” case.

## Appendices

### Appendix A - Rules for Determining Redcap Compensation and Other Station-Attendant Compensation for Months Before 9-1941

#### **A1 Redcap Defined**

"Redcap" means a station employee whose duties consisted of or included the carrying of passenger's hand baggage and otherwise assisting passengers at passenger stations. Before passage of the Fair Labor Standard Act in 10-1938, the majority of employers did not carry redcaps on the payroll. The remuneration for this service consisted solely of tips received from railroad patrons. Therefore, in the absence of evidence indicating that a redcap was paid through the employer's regular payroll, it was assumed that his payment for service, in whole or substantial part, was in the form of tips.

#### **A2 Compensation For Months After August 1941**

The compensation attributable to each month of service as a redcap after August 1941 is the amount paid for this service through an employer's payroll. Compensation for this service was reported to the RRB by employers. Records of compensation for this service furnished by the CESC are accepted as correct.

#### **A3 Redcap Compensation for Months Before 9-1941**

##### a. 1937 RRA

Under the 1937 RRA, redcap months prior to 9-1941 were treated as prior service months and the redcap compensation was included in the prior service average.

1. Red Cap Service Prior to 1941 - Redcap service prior to 1941 was included in the prior service months and prior service average.

Redcap service before 9-1941 was not be used, however, when awarding the residual payment. In residual payment cases, only the compensation which was actually paid through the employee's payroll was included in the employee's total creditable compensation.

2. Red Cap Service After 1940 - Redcap service after 1940 was considered subsequent service and was used in computing the average monthly remuneration (AMR).

##### b. Under the 1974 RRA

The 1974 RRA changed the usage of redcap service and compensation after 12-1936 and before 9-1941; these months were then used as subsequent service.

However, the amount of the average redcap compensation for those months was still determined as in 1937 Act cases.

1. Redcap Service Prior to 1937 - Redcap service prior to 1937 was included in the prior service months.
2. Red Cap Service After 1936 - Redcap service after 1-1-37 was considered subsequent service and was used, along with other pre-1975 railroad service, in computing the 1974 Act PIA's, the average monthly compensation (AMC) for components 1 and 2 of tier 2, and the grandfather clause increase. It was also used to determine the quarters of coverage for the employee's vested status for payment of the vested dual benefit.

Redcap service before 9-1941 was not used, however, when awarding the residual payment. In residual payment cases, only the compensation which was actually paid through the employee's payroll was included in the employee's total creditable compensation.

#### **A4 Compensation for Months Before 9-1941**

The monthly compensation or remuneration of a person who performed redcap service before 9-1941, was determined as follows:

- a. The average monthly compensation for all months of redcap service before 9-1941 was determined; or,
- b. The 1924-1931 period applies (retirement annuity cases only) in determining the compensation for all months of other service before 1937, unless missing records or insufficient service is involved. In this event, use the instructions governing the determination of the average monthly compensation.

#### **A5 Compensation for Concurrent Service**

Compensation reported for other concurrent non-redcap service after 1936, was applied only to that service. When the employee performed redcap service and service in another occupation during the same month before 9-1941, compensation was reported for that month for the other occupation plus the compensation for redcap service (subject to the \$300 maximum).

When an amount, exceeding the compensation attributable to redcap service, was reported for any month after 12-1935 and before 9-1940, it was assumed, in the absence of explicit information to the contrary, that the employee worked in another occupation.

## **A6 Development of Compensation**

- a. Retirement Annuity Cases - CESC furnished a monthly breakdown of the employee's compensation before 9-1941, on Form G-122. If the employer reported 1941 service on an annual basis, the Form G-122 indicated a breakdown only through the year 1940 (see "c" below).
- b. Survivor Annuities and LSDP's - When the compensation for redcap service was not established before the employee's death, the CESC furnished a monthly breakdown of compensation for the period 9-1940 through 8-1941, on a Form G-122. If the employer reported 1941 service on an annual basis, the Form G-122 indicated a breakdown only through the year 1940 (see "c" below).
- c. Employer Reported Service and Compensation Annually - A monthly breakdown of 1941 compensation was requested from the employer. If a lump-sum accrued wage increase was reported for 12-1940, the employer indicated the portion of the increase that was allocated to each month 9-1940 through 12-1940.

## **A7 Service Verified in the Period 9-1940 Through 8-1941**

- a. Six or More Service Months - The test period for determining the redcap average was September 1, 1940 through August 31, 1941. When the employee was paid compensation through the employer's payroll for redcap service in at least six calendar months, in the period 9-1940 through 8-1941, the average of that compensation was attributable to each month before 9-1941 in which he performed redcap service.

The months and compensation for this period were taken from Form G-122. The average was the compensation divided by the months. If there were any months shown on Form G-122 before September 1940 which exceeded the prior service average the service and compensation for those months, they were removed from the prior service total and added to the subsequent service total.

The following format was used as a worksheet for determining the average redcap compensation and creditable service months due to redcap compensation:

		Months	Comp
1.	Total S/S and Comp 10-1-38 thru 12-31-74	_____	_____
2.	Minus total S/S and Comp 10-1-38 thru 8-31-41 to be excluded (from G-122)	_____	_____
3.	Difference	_____	_____

4. Plus month period 10-1-38 thru 8-31-40  
that exceed the average (See below.) \_\_\_\_\_
5. Subsequent Service and Compensation  
to be used line 3, Form G-367 \_\_\_\_\_

Consider as prior service all months 10-1-38 thru 8-31-41 minus the months from (4.) above plus any months verified by "W" on Form AA-2P for the period 1-1-37 thru 9-30-38. Months before 1-1-37 may only be included if the total service after 1-1-37 does not exceed 360.

List Compensation for Each Month 9-40 thru 8-41

Month Compensation

9/40 \$

10/40

11/40

12/40

1/41

2/41

3/41

4/41

5/41

6/41

7/41

8/41

\$\_\_\_\_\_ divided by \_\_\_\_\_ equals \$\_\_\_\_\_

Total  
Compensation

number of  
months

Redcap

9/40 thru 8/41

9/40 thru 8/41

Average

List months restored (show month and year for each month in item D).



- b. Less than Six Service Months - When the employee was paid compensation for some but less than 6 months in the period 9-1940 through 8-1941, a letter was sent to the employer requesting a report of non-compensated service, requesting a statement showing the average compensation paid to redcap employees during the 9-1940 through 8-1941 period at the station where the employee last performed this service and requesting the average wage rate in effect at that station during that period.

The employee's monthly compensation before 9-1941 was then determined to be greatest of the following:

1. The average of the compensation paid redcaps at the station where the employee last performed redcap service, in the period 9-1940 through 8-1941; or
2. If only the average wage rate was available, 90% of the average wage rate converted into the monthly rate. (An hourly or daily rate was converted into a monthly rate by multiplying by 204 hours or 25.5 days, respectively. A weekly rate was converted by multiplying by 52.1429, then dividing by 12. A yearly rate was converted by dividing by 12); or
3. The average of the compensation paid to the employee for redcap service in the period 9-1940 through 8-1941; or
4. The average compensation paid to the employee for redcap service in the period 9-1940 through 8-1941, after excluding:
  - a. Any month, and the compensation for that month, in an employment period of two consecutive calendar months or one calendar month preceded and followed by months in which the employee earned no compensation, if the compensation in such month(s) was less than 60% of the average compensation paid employees at the station where the employee last performed redcap service in the 9-1940 through 8-1941 period or less than 54% of the average wage rate for that station.
  - b. Any month and compensation for a that month, which was adjacent to a period of one or more calendar months in which the employee earned no compensation, if the compensation for that month was less than the compensation for the month immediately preceding or following the adjacent month.
  - c. If not excluded by a or b above, the last month and compensation for that month, of the period 9-1940 through 8-1941, if no compensation was earned in the month immediately preceding that month and if the compensation for that last month was less than

60% of the average paid at that station or less than 54% of the average wage rate.

When compensation was determined in accordance with this subsection, a memorandum signed by the associate director, summarized the facts in the case and indicated the average monthly compensation established for service before 9-1941.

### **A8. PIA Data**

Redcap compensation after 1-1-37 was considered in computing any Old Start PIA in which railroad compensation was included.

- a. AMW Is Less Than \$250 - If the AMW was under \$250 or all RR service was before 1951, an Old Start PIA (or PIB) may have exceeded the New Start PIA. The Division of Compensation and Certification provided the recomputation of the AMR or the AMC, and the old start PIA's based on redcap compensation on Form G-563. The request for the Form G-563 also indicated the employee's DOB, ABD, and, if he had a DF, the date his DF began. Item 8 of the Form G-563, also listed the following:
- Number of months before Redcap, Redcap months, Total subsequent service months including Redcap service.
  - Total Pre-1975 Compensation (excluding Redcap COMP shown on Form G-122), Redcap Compensation (using total average from redcap worksheet for an "W" months on AA-2P), Total Pre-1975 Compensation
  - Prior service months (including any Redcap Prior to 1937)
  - Total prior service compensation
  - Total Months of Service
  - Total Compensation

EXAMPLE: S/S 219 + 56 Redcap = 275 months

COMP \$44,526.82 - \$3,990.00 = \$48,516.82

P/S 32 months

\$2,280.00 Comp.

Total Months = 307

Total Comp. = \$50,796.82

- b. AMW Exceeded \$250 But Redcap Service Provided Vested Status - The PIA's were not affected by redcap service if the AMW is over \$250. However, the redcap service may have increased the years of service to vest the employee, spouse or survivor for a vested dual benefit.
- c. AMW Exceeds \$250 and Annuitant Not Vested And is Not Receiving Her/His Own Employee Annuity - If the AMW exceeds \$250 and the widow(er) was neither vested nor receiving her/his own employee annuity, or the survivor annuitant was a parent, child or student annuitant, redcap service did not affect the survivor annuity rate. A "Note to File" was created to explain that redcap service was considered but determined not to affect the survivor annuity rate.

### **A9. AMR And AMC Data**

- a. 1937 Railroad Retirement Act - The employee's Average Monthly Remuneration (AMR)
- b. 1974 Railroad Retirement Act - The employee's average monthly compensation (AMC)
- c. 1981 Railroad Retirement Act Amendments - The 1981 RRA Amendment changed the computation of the employee's Average Monthly Compensation (AMC) to the High Five Years. For these cases, redcap compensation did not affect the employee's (High Five) AMC used in his tier 2 rate. It may, however, have increased the employee's years of service in computing the tier 2 rate.

### **A10. Residual Payment**

Redcap service and compensation was used to increase the monthly survivor insurance annuity rate. However, it was not included in residual payments. The examiner wrote in "red" ink in the column of Form G-90 or G-90a, "REDCAP - NOT FOR USE IN RESIDUAL PAYMENTS."

## **Appendix B - How Compensation Before 1937 Was Verified**

### **B1. General**

Before 7-1-74 employers were required to furnish information from their payrolls as to the actual amount of compensation earned in each month needed to determine the prior service average. Effective July 1, 1974 or later, verification of compensation for service before 1937 was no longer required. If the prior service compensation record was not already available at the RRB, the Interstate Commerce Commission (ICC) occupational average was used to determine the average compensation before 1937. The ICC average was the combined average of employee earnings reported to the ICC for the

years 1924-1931 for employees in the occupations in which an individual was employed during the 1924-1931 period, or in a similar occupation.

## **B2. How Employer Reported Occupational Title**

If an applicant claimed service before 1937, the Form AA-2p released to the employer indicated the number of months the employer needed to verify to establish 360 months and requested the occupational title for those months. The occupational titles were requested for only those months that were used to determine the average monthly compensation. (See [Appendix C](#) of this chapter for instructions on determining prior service average.)

- a. Employee Claimed At Least 18 Months During Base Period (1924-1931) - The employer was requested to report occupational titles for all months in this period which were then included in the "years of service."

NOTE: Beginning with 1-1962, service in the 1924-1931 period was not needed for 360 months when the employee had service in each month after 12-1931. However, it was necessary to request the occupational titles for the latest 18 months in the base period, even though these months were not used as service. The occupational titles reported for service in the base period were necessary to determine the prior service average.

- b. Employee Claimed To Have Worked Less Than 18 Months During Base Period (1924-1931) - The employer was asked to verify all service before 1937 that were included in the "years of service" and was asked to report the occupational titles for those months in the period 1924-1936.
- c. Employee Claimed No Service During Period 1924-1936, But Claimed Service Before 1924 - The employer was asked to verify all of the service that was included in the years of service and to report the exact title of the employee's last occupation in the last month for which service was verified.
- d. Occupational Titles Required From More Than One Employer - When service with two or more employers was claimed or indicated during a period needed to determine the prior service average, the occupational titles were obtained from each employer for all months involved.

## **B3. Verification of Express Commissions**

A claim for express commissions was not solicited unless there was a definite indication of joint service with a carrier and an express company during a period used in determining the prior service average.

If an employee claimed joint service with a carrier and express company during the period used to determine the prior service average and the records were available at the RRB, the case was handled as follows:

- a. Creditability of Express Commissions Earned in Joint Employment (Cases Where Actual Compensation was Available to the RRB Before July 1, 1974) - The full amount of the verified express commissions, minus expenses, for any month in the period was used to determine the prior service average. When the employee performed joint service for a carrier and an express company during that month, the \$300 monthly maximum was applied after crediting the NET express commissions.
- b. Claimant Statements - If the "location" of the service was not shown on other material in the file that information was secured from the claimant before releasing an AA-2P. This was essential because the express company records were kept by "location."

When express commissions were already available at the RRB for months in the period used to determine the prior service average, the claimant must have furnished the RRB with a certification of expenses incurred during his express service.

#### **B4. Compensation for Part of Month of Creditable Service for International Employer**

When the fractional part of a month is to be credited as a full month of service and falls within a period used for determining the employee's average monthly compensation for prior service, the total compensation reported as earned in the U.S. is to be included as creditable compensation.

### **Appendix C - Determining Prior Service Average**

#### **C1. Definition of Terms Used**

The following list of terms were frequently used in determining the prior service average:

- a. ICC Average - The combined average of employee earnings reported to the ICC for the years 1924-31, by Class I employers for employees in the occupations in which an individual was employed during the 1924-31 period, or in a similar occupation (see [Appendix E](#)).
- b. Months Proved - The months of service verified by any of the methods described in Appendix A of [RCM 5.2](#).
- c. Months for Which Compensation Records Available - The months of verified service for which an employer previously submitted a complete record of compensation. Any month in which compensation records were wholly or partly missing could not be considered a month for which compensation records were available.
- d. Years of Service - The period including an employee's service after 1936 and his service before 1937 taken in reverse order up to a maximum of 360 months.

## **C2. How The ICC Average Was Determined**

The "Alphabetical List and Index to Occupational Classification and Reporting Divisions," indicated the ICC "reporting division number" that was required to determine the ICC average. The average for that occupation in [Appendix D](#) of this chapter is opposite the corresponding "reporting division number."

When more than one occupation was involved, the following rules determined ICC average:

- A. More Than One Occupation Reported in Same Month - It was assumed that the employee worked the entire month in the occupation having the highest ICC average.
- B. Service in More Than One Occupation to be Considered - The ICC average for each occupation was multiplied by the number of months reported for that occupation and then divided by the total number of service months in the period used to determine the monthly average.

## **C3. How AMR/AMC Was Determined**

Except for a redcap or other station attendant, Board Order 59-19 determined the computation of the AMR or AMC for service before 1937, in accordance with C4 - C6 below, whichever is applicable.

The provisions of Board Order 59-19 applied in all cases in which the annuity was awarded on or after 1-28-59. Since it was not possible to compute the AMR under the provisions of this Board Order on the day of approval, some awards as late as 2-9-59 were NOT based on an average computed under B.O. 59-19. When an annuity was awarded on or after 1-28-59 and the AMR was not determined in accordance with B.O. 59-19, the case was not reopened solely to recompute the monthly average under the new rules.

If the AMR was properly determined under rules applicable at that time (whether before, on, or after 1-28-59), the case may have been reopened if compensation records become available for one or more months for which the records were considered not available when the previous determination was made AND the redetermination will increase the AMR. This applied even when an annuity was terminated for any reason (i.e., return to LPE or recovery from disability) and the employee became re-entitled to an annuity at a later date.

## **C4. Actual Compensation Prior to 1937 Considered in Determining Prior Service Avg**

- a. At Least 18 Months of Service Proved in the Period 1924-31 Were Included in "Years of Service"

1. If compensation records WERE available for at least one-half but not less than 18 of the months proved, the creditable compensation earned during those months was divided by the number of months in the period 1924-31 included in the "years of service" for which compensation records were available.
  2. If compensation records WERE NOT available for one-half or for 18 of the months (whichever is higher) of service proved in the 1924-31 period, the monthly compensation was the higher of:
    - The monthly average of the compensation earned in the months in the 1924-31 period which are included in the "years of service" and for which compensation records are available; or
    - The ICC average.
- b. At Least 18 Months of Service Proved in the Period 1924-31 - Less Than 18 Months Included in "Years of Service"
1. If compensation records WERE available for all of the last 18 months of service verified in the 1924-31 period, the monthly average was the monthly average of the compensation earned in those months.
  2. If compensation records WERE NOT available for all of the last 18 months in the period 1924-31, the monthly compensation was the higher of:
    - The monthly average of the compensation earned in the last 18 months of proved service in the 1924-31 period for which compensation records were available; or
    - The ICC average.
- c. Service Began Before 1932 - Less Than 18 Months Service Proven in 1924-31 Period - The AMC was the higher of:
1. The monthly average of the compensation earned in the months in the 1924-36 period which were included in the "years of service" and for which compensation records were available; or
  2. The ICC average.
- d. No Service Proved in 1924-1936 Period But Service Prior to 1924 Is Proved Which Is Included in "Years of Service" - The monthly compensation is the ICC average for the last occupation for which service prior to 1924 is proved.
- e. Service Began After 1931 - The monthly compensation is the higher of:

1. The monthly average of the compensation earned in the months in the period 1932-36 which were included in the "years of service" and for which compensation records are available; or
2. The ICC average.

#### **C5. Actual Compensation for All Prior Service Months was Not Reported**

- a. Years of Service Included At Least 18 Months of Service Proved in the Period 1924-31 - The prior service average was the ICC average for the months in the 1924-31 period which were included in the "years of service".
- b. At Least 18 Months of Service Proved in the Period 1924-31 - Less Than 18 Months Included in "Years of Service" - The prior service average was the ICC average of the last 18 months of proven service in the 1924-31 period.
- c. Service Began Before 1932 - Less Than 18 Months Service Proven in 1924-31 Period - The prior service average was the ICC average for the months in the 1924-36 period which are included in the "years of service."
- d. No Service Proved in 1924-1936 Period But Service Prior to 1924 Was Proved and Included in "Years of Service" - The monthly compensation was the ICC average for the last occupation for which service prior to 1924 was proved.
- e. Service Began After 1931 - The monthly compensation was the ICC average for proven months in the period 1932-36 which were included in the "Years of Service."

#### **C6. Both ICC Average and Actual Compensation was Included**

There were some cases where both the actual compensation and the ICC average were included in the prior service average. This occurred when we had actual prior service compensation in file and additional prior service was later claimed. Verification of the compensation for the additional prior service months was not requested. Instead, the applicable ICC average was applied to all additional prior service months verified and the prior service average was computed in accordance with C4 above. The ICC average used for the additional prior service months was considered as actual compensation.

#### **Appendix D – Agreements Covering House Rent, Meals, and Miscellaneous Facilities**

<b>Employer</b>		
<b>Position</b>	<b>Period Covered</b>	<b>Allowance</b>
<b>Alabama Great Southern Railroad Company, The</b>		



(Sou. Ry.) Section Foremen	4/1/26 to 1/15/28 1/16/28 thru 10/13/37 (Sou.)	\$ 5.00 per mo. \$ 7.50 per mo.
<b>Atchison, Topeka and Santa Fe Railway Company, The</b>		
Section Foremen Yard Foremen (M of W)	8/1/29 to date Employer letter 4/3/46	\$ 5.00 per mo.
<b>Atlanta and West Point Railroad Company</b>		
Section Foremen Yard Foremen Apprentices Asst. Foremen B&B Foremen, with Families	7/30/23 to 9/1/37	\$15.00 per mo.
<b>Atlanta, Birmingham and Coast Railroad Company</b>		
Section Foremen	10/16/41 thru 9/19/44	\$15.00 per mo.
<b>Atlantic Coast Line Railroad Company</b>		
Section Foremen	1/21/23 thru 12/18/41	\$12.00 per mo.
<b>Augusta and Summerville Railroad Company</b>		
Section Foremen Yard Foremen Apprentices Asst. Foremen B&B Foremen, with Families	5/16/22 to 9/1/37	\$15.00 per mo.
<b>Baltimore and Ohio Railroad Company, The</b>		
Agent Greenville, Ohio	10/8/28 thru 2/4/41	\$15.00 per mo.
<b>Belt Railway Company of Chattanooga</b>		
Section Foremen	9/21/29 thru 10/13/37 (Sou.)	\$ 7.50 per mo.
<b>Canadian National Railway</b>		

Agent, Fraser (rent, light, fuel & water)		\$200 per annum
<b>Central of Georgia Railway Company</b>		
Section Foremen	10/1/22 thru 10/8/40	\$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen, B&B Foremen with Families		
Extra Gang Foremen without camp cars	3/1/28 thru 10/8/40	\$15.00 per mo.
<b>Charleston and Western Carolina Railway Co.</b>		
Section Foremen	12/5/23 to 5/31/38	\$10.00 per mo.
Yard Foremen	6/1/38 thru 8/8/38	\$12.00 per mo.
<b>Chesapeake and Ohio Railway Employees' Hospital Association</b>		
All Employees	No allowance creditable	
Meals or Lodging		
<b>Chesapeake and Ohio Railway Company, The</b>		
Section Foremen	9/1/23 thru 3/31/36 (basic rental) More or less than \$6.00 for particular houses	\$6.00 per mo.
<b>Chicago and North Western Railway Company</b>		
Agents	No allowance creditable	
Section Foremen	(Except in particular instances)	
<b>Chicago, Burlington and Quincy Railroad Company</b>		
All Employees	No allowance creditable	
<b>Chicago, Milwaukee, St. Paul and Pacific Railroad Company</b>		
All Employees	No allowance creditable	
<b>Cincinnati, Burnside and Cumberland River Railway Company</b>		
Section Foremen	9/16/29 to -- (Sou.)	\$ 7.50 per mo.

<b>Cincinnati, Georgetown Railroad Company, The</b>		
All Employees	No allowance creditable (Unless adjudicated in special cases)	
<b>Cincinnati, New Orleans and Texas Pacific Railway Company, The</b>		
Section Foremen	9/16/29 thru 10/13/37 (Sou.)	\$ 7.50 per mo.
<b>Columbus and Greenville Railway Company</b>		
Section Foremen	4/1/30 to --	\$10.00 per mo.
<b>Copper Range Railroad Company</b>		
All Employees	No allowance creditable	
<b>Dardanelle and Russellville Railroad Company</b>		
All Employees	No allowance creditable	
<b>Denver and Rio Grande Western Railroad Company, The</b>		
Agents	No allowance creditable	
Section Foremen		
<b>Duluth, Missabe and Iron Range Railway Company</b>		
All Employees	No allowance creditable	
<b>Felicity and Bethel Railroad</b>		
All Employees	No allowance creditable (Unless adjudicated in special cases)	
<b>Florida East Coast Railway Company</b>		
Section Foremen	7/1/22 thru 8/24/38	\$15.00 per mo.
Yard Foremen		
Track Foremen	4/12/32 thru 8/24/38	(Same as above)
Bridge Tenders		
Pumpers		
<b>Fred Harvey and Fred Harvey Service, Inc.</b>		
All Employees	No allowance creditable	

(Meals)		
<b>Georgia Railroad, Lessee Organization</b>		
Section Foremen	5/16/22 thru 5/15/37	\$15.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen		
B&B Foremen, with Families		
<b>Georgia Southern and Florida Railway Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo.
<b>Great Northern Railway Company</b>		
Dining Car	No allowance creditable	
Employees (Meals)		
Section Foremen	No allowance creditable	
<b>Gulf and Ship Island Railroad Company</b>		
See Illinois Central Railroad Company		
<b>Gulf, Colorado and Santa Fe Railway Company</b>		
See Atchison, Topeka and Santa Fe Railroad Company		
<b>Gulf, Mobile and Northern Railroad Company</b>		
Section Foremen	7/1/21 thru 1/1/37	\$ 8.00 per mo.
Yard Foremen		
(1)	Effective 6/16/26 this allowance raised to\$10.00 per mo. for section foremen on Sections 0 and 1 at Mobile and section in Meridan Yards.	
(2)	Section 12, South Laurel.	
<b>Gulf, Mobile and Northern Railroad Company - Louisiana Division (formerly N.O.G.N. RR.)</b>		
Section Foremen	7/1/21 thru 1/11/37	\$ 5.00 per mo.
Yard Foremen		
Apprentices		
Asst. Foremen		
B&B Foremen		

(Effective 5/1/27 this allowance increased to \$10.00 per mo. for section foremen and yard foremen on this division)		
<b>Gulf, Mobile and Ohio Railroad Company</b>		
Section Foremen	12/16/21 to 12/31/26 1/1/27 to 12/31/31	\$ 5.00 per mo. \$10.00 per mo.
<b>Harriman and Northeastern Railroad Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo. (Sou.)
<b>Highpoint, Randleman, Asheboro and Southern Railroad Company</b>		
Section Foremen	4/1/26 to 1/15/28 1/16/28 thru 10/13/37	\$ 5.00 per mo. \$ 7.50 per mo.
<b>Illinois Central Railroad Company</b>		
Section Foremen	1/1/24 thru 11/5/40	\$ 5.00 per mo.
(House rent allowances, when applicable, are included in the amounts of compensation reported on service report forms. Therefore, unless affirmative evidence of record in a particular case indicates that the house rent allowance has been omitted, amounts reported on the service report form shall not be questioned.)		(Standard) Exceptional houses allowance between \$5 and \$15 per mo.
Agents Telegraphers	No allowance creditable	
<b>Jacksonville Terminal Company</b>		
Section Foremen	3/1/20 thru 9/2/42	\$12.00 per mo.
*Roadmaster	3/1/20 thru 9/2/42	\$25.00 per mo.
*(oral agreement)		
<b>Kansas City Kaw Valley and Western Railroad Company, The</b>		
<b>Kansas City Southern Railway Company, The</b>		
Foremen and	1/1/22 to 12/31/26	\$10 to \$15 per mo.
Asst. Foremen in the M of W Dept.	1/1/27 thru 7/15/38	\$10.00 per mo.

<b>Lorain and West Virginia Company, The</b>		
All Employees	No allowance creditable	
<b>Macon, Dublin and Savannah Railroad Company</b>		
Section Foremen	3/1/23 thru 1/1/37	\$ 8.00 per mo.
<b>Midland Continental Railroad</b>		
Section Foremen		
<b>Missouri and Arkansas Railway Company</b>		
Section Foremen		
<b>Missouri Pacific Railroad Company</b>		
All Employees	No allowance creditable	
<b>Nashville, Chattanooga &amp; St. Louis Railway, The</b>		
All Employees	No allowance creditable	
<b>Nevada Copper Belt Railroad Company</b>		
Agent Telegrapher, Hudson, Nev.	3/1/36 to 10/5/38	\$ 7.50 per mo.
<b>New Orleans and Northeastern Railroad Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo. (Sou.)
<b>New Orleans Terminal Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo.
<b>Northern Alabama Railway Company</b>		
Section Foremen	4/1/26 to 1/15/28	\$ 5.00 per mo.
	1/26/28 thru 10/13/37	\$ 7.00 per mo.
<b>Northern Pacific Railway Company</b>		
All Employees	No allowance creditable	
<b>Pacific Electric Railway Company</b>		

Vacation Camp Employees (Meals and Lodging)	No allowance creditable	
<b>Panhandle and Santa Fe Railway Company</b>		
Section Foremen	8/1/29 thru 2/9/39	\$ 5.00 per mo.
Yard Foremen	(AT&SF)	
<b>Pere Marquette Railway Company</b>		
<b>St. Johns River Terminal Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo. (Sou.)
<b>St. Louis-San Francisco Railway Company</b>		
Section Foremen		
<b>Seaboard Air Line Railway Company</b>		
Section Foremen	7/1/21 to 4/30/24	\$ 8.00 per mo.
Agents-Telegraphers (CH&N Ry. Co.)	5/1/24 thru 1/4/38	\$12.00 per mo.
<b>Southern Pacific Company</b>		
All Employees (House Rental)	No allowance creditable	
<b>Southern Railway Company</b>		
Section Foremen	4/1/26 to 1/15/28	\$ 5.00 per mo.
	1/16/28 thru 10/13/37	\$ 7.50 per mo.
Extra Gang Foremen on camp cars (Board)		.40 per day commutation for subsistence 5/22/17 thru 2/16/39
<b>Spokane, Portland and Seattle Railway Company</b>		
All Employees	No allowance creditable	
<b>Texas and New Orleans Railroad Company</b>		
Agents-Telegraphers	No allowance creditable	

Section Foremen	No allowance creditable except actual cash payments constituting part of compensation applicable to a position	
<b>Texas and Pacific Railway Company, The</b>		
Section Foremen	No allowance creditable	
<b>Union Pacific Railroad Company</b>		
All Employees	No allowance creditable	
<b>Virginia and Truckee Railway</b>		
All Employees	No allowance creditable	
<b>Western Pacific Railroad Company, The</b>		
All Employees	No allowance creditable	
<b>Western Railway of Alabama, The</b>		
Same as for Atlanta and West Point Railroad Company		
<b>Wheeling and Lake Erie Railway Company, The</b>		
All Employees	No allowance creditable	
<b>Winston-Salem Southbound Railway Company</b>		
Section Foremen	1/21/23 thru 12/18/41	\$ 8.00 per mo.
<b>Woodstock and Blocton Railway Company</b>		
Section Foremen	9/16/29 thru 10/13/37	\$ 7.50 per mo.
<b>Yazoo and Mississippi Valley Railroad Company, The</b>		
Same as for Illinois Central Railroad Company		

## Appendix E - Interstate Commerce Commission Averages

Combined Average Monthly Compensation by Occupation

Computed From Annual Report to ICC on Employees

Service and Compensation for Period 1924-1931

(All Class I Railroads Combined)



<b>Div. No.</b>	<b>Occupation</b>	<b>Average Monthly Comp.</b>
<u>Executives, Officials and Staff Assistants</u>		
1.	Executives and assistants	\$300.00
2.	Division officers and assistants	300.00
<u>Professionals, Clerical and General</u>		
3.	Engineering assistants (A)	248.51
4.	Engineering assistants (B)	189.85
5.	Subprofessional assistants	138.43
6.	Legal assistants	232.35
7.	Chief clerks (major departments)	239.83
8.	Chief clerks (minor departments)	184.26
9.	Clerks and clerical specialists (A)	164.97
10.	Clerks (B)	128.63
11.	Clerks (C)	101.19
12.	Office machine operators	112.11
13.	Stenos and secretaries (A)	157.94
14.	Stenos and typists (B)	120.99
15.	Storekeepers, sales agents and buyers	168.45
16.	Ticket agents and assistant ticket agents	165.02
17.	Traveling auditors or accountants	215.66
18.	Telephone operators and office assistants	79.04
19.	Messengers and office boys	57.64
20.	Elevator operators and office assistants	79.98

21.	Lieutenants and sergeants of police	153.19
22.	Patrolmen	113.31
23.	Watchmen (no police authority)	83.07
24.	Supervising traffic agents	300.00
25.	Traffic, development and advertising agents	220.68
26.	Fire prevention, smoke and time service insp. and office building superintendent	198.87
27.	Claim agents and investigators	222.58
28.	Real estate and tax agents and investigators	236.97
29.	Examiners, instructors and special investigators	228.07
30.	Miscellaneous trades workers (not plumbers)	145.46
31.	Motor vehicle operators	106.47
32.	Teamsters and stablemen	117.74
33.	Janitors and cleaners	75.32
<u>Maintenance of Way and Structures</u>		
34.	Roadmakers and general foremen (MW&S)	238.80
35.	Asst. general foremen (MW&S)	213.44
36.	Supervisors M of W and scale inspectors	187.50
37.	M of W inspectors	177.22
38.	Bridge and building gang foremen (skilled labor)	166.60
39.	Bridge and building carpenters	122.94
40.	Bridge and building ironworkers	149.93
41.	Bridge and building painters	119.64
42.	Masons, bricklayers, plasterers and plumbers	149.52
43.	Skilled trades helpers (MW&S)	98.22

44.	Regular apprentices (MW&S)	87.87
45.	Portable steam equipment operators (MW&S)	140.96
46.	Portable steam equipment helpers (MW&S)	97.00
47.	Pumping equipment operators (MW&S)	68.92
48.	Gang foremen (extra gang and work train)	129.29
49.	Gang foremen (bridge, building, signal and telegraphers)	163.36
50.	Gang or section foremen	123.27
51.	Laborers (extra gang and work train)	73.89
52.	Track and roadway section laborers	72.17
53.	M of W laborers (except track and roadway)	76.26
54.	General foremen (signal and telegraphers)	244.75
55.	Asst. general foremen (signal and telegraphers)	216.29
56.	Gang foremen (signal and telegraphers skilled labor)	191.11
57.	Signalmen and signal maintainers	157.80
58.	Linemen and groundmen	148.65
59.	Asst. signalmen and signal maintainers	127.24
60.	Signalmen helpers	105.77
<u>Maintenance of Equipment and Stores</u>		
61.	General foremen (ME)	276.00
62.	Assistant general foremen (ME)	235.96
63.	General foremen (stores)	175.02
64.	Assistant general foremen (stores)	166.24
65.	Equip. shop and elec. inspectors (ME)	213.72

66.	Material and supplies inspectors	179.30
67.	Gang foremen (skilled labor)	189.81
68.	Blacksmiths	150.35
69.	Boilermakers	158.93
70.	Carmen (A)	150.08
71.	Carmen (B)	145.26
72.	Carmen (C)	144.30
73.	Carmen (D)	132.64
74.	Electrical workers (A)	157.79
75.	Electrical workers (B)	146.15
76.	Electrical workers (C)	133.26
77.	Machinists	156.48
78.	Molders	143.03
79.	Sheet-metal workers	155.79
80.	Skilled trade workers (ME&S)	110.46
81.	Helper apprentices (ME&S)	108.85
82.	Regular apprentices (ME&S)	77.37
83.	Gang foremen laborers (ME&S)	122.58
84.	Coach cleaners	82.55
85.	Laborers (ME&S)	82.21
86.	Common laborers (ME&S)	79.87
87.	Stationary engineers (steam)	138.21
88.	Stationary firemen and oilers (steam and electric)	111.98
89.	Coal passers and water tenders (steam and boiler rooms)	99.26

<u>Transportation (Other Than Train, Engine and Yard)</u>		
90.	Train dispatchers and directors	247.62
91.	Station agents (supervisory major stations)	238.06
92.	Station agents (supervisory small stations)	163.20
93.	Station agents (non-supervisory small stations)	98.50
94.	Station agents (telegraphers and telephoners)	130.04
95.	Chief telegraphers and telephoners	176.92
96.	Clerk-telegraphers and telephoners	128.50
97.	Telegraphers, telephoners and towermen	133.90
98.	Stationmasters and assts.	180.33
99.	Supervising baggage agents	166.61
100.	Baggage agents and assts.	118.53
101.	Baggage, parcel room and station attendants	93.11
102.	General foremen (freight station, warehouses, grain elevators and docks)	172.39
103.	Asst. general foremen (freight, stations, warehouses, grain elevators and docks)	152.62
104.	Gang foremen (freight, stations, warehouses, grain elevators and docks)	133.77
105.	Callers, loaders, scalers and sealers	105.10
106.	Truckers (stations, warehouses and platform)	92.29
107.	Laborers (coal and ore docks and grain elevators)	104.46
108.	Common laborers (stations, warehouses, platform and grain elevators)	82.71
109.	Stewards, rest and lodging house managers	127.97
110.	Chefs and first cooks (dining cars and restaurants)	112.37

111.	Second and third cooks (dining cars and restaurants)	77.89
112.	Waiters and lodging house attendants	52.95
113.	Camp and crew cooks and kitchen helpers	63.94
114.	Barge and launch officers and lighter workers	111.87
115.	Deck officers (ferryboats and tow vessels)	185.00
116.	Engine-room officers (ferryboats and tow vessels)	182.50
117.	Deck and engine-room workers (ferryboats and tow vessels)	116.59
118.	Deck and engine-room officers and workers (steamers)	69.00
119.	Shore workers (floating equipment)	101.33
120.	Transportation and dining service inspectors	202.10
121.	Parlor and sleeping car conductors	142.47
122.	Train attendants	87.40
123.	Bridge operators and helpers	92.61
124.	Cross and bridge flagmen and gatemen	65.07
125.	Laundry workers and foremen	83.36
<u>Transportation (Train, Engine and Yard)</u>		
126.	Yardmasters and assts.	223.40
127.	Switch tenders	127.14
128.	Outside hostlers	154.95
129.	Inside hostlers	140.59
130.	Outside hostler helpers	123.16
131.	Road passenger conductors	254.27

132.	Asst. road passenger conductors	212.48
133.	Road freight conductors (thru freight)	216.29
134.	Road freight conductors (local)	256.28
135.	Road passenger baggagemen	193.04
136.	Road passenger brakemen and flagmen	171.75
137.	Road freight brakemen and flagmen (thru freight)	156.69
138.	Road freight brakemen and flagmen (local)	197.47
139.	Yard conductors and foremen	203.88
140.	Yard brakemen and helpers	172.92
141.	Road passenger engineers and motormen	273.99
142.	Road freight engineers (thru freight)	246.65
143.	Road freight engineers (local)	300.00
144.	Yard engineers and motormen	210.65
145.	Road passenger firemen and helpers	206.40
146.	Road freight firemen and helpers (thru freight)	172.35
147.	Road freight firemen and helpers (local)	221.23
148.	Yard firemen and helpers	158.92

