

## 205.1 Employer Defined

An "employer" under the Railroad Retirement Act (RRA) is:

- Any carrier subject to Part I of Interstate Commerce Act. (This includes United States carriers operating in Canada as explained in [FOM 205.4](#)); and
- Any company directly or indirectly owned or controlled by carriers; and
- Any receivers, trustee or other individual body possessing the property of or operating the business of any carrier; and
- Certain railroad associations and railway labor organizations.

See following sections for details.

## 205.2 Types of Employers

### 205.2.1 Carriers

A carrier is an express company, sleeping-car company or carrier by railroad subject to Part I of the Interstate Commerce Act. This includes United States carriers operating in Canada as explained in [FOM 205.4](#).

### 205.2.2 Associations, Bureaus and Agencies

This term includes railroad associations, traffic association, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other organizations that are:

- A. Controlled and maintained wholly or principally by two or more employers; and
- B. Engaged in the performance of services in connection with or incidental to railroad transportation.

### 205.2.3 Company Controlled by Carrier

Any company directly or indirectly owned or controlled by one or more carriers, or under common control therewith and which operates equipment, facilities or performs service (except casual or trucking service) in connection with railroad transportation.

- A. Control - A company is controlled by one or more carriers when:
  1. A carrier is directing its policies and business; or

2. A carrier has the right or power by any means, regardless of stock ownership, to direct (either directly or indirectly) its policies and business.
- B. Common Control - A company or person is under common control with a carrier when the control of each is by the same person, persons or company.
- C. Casual Service - Service or operation of equipment or facilities by a controlled company or person in connection with railroad transportation is casual when it is:
1. Insubstantial; or
  2. So irregular or infrequent that it cannot be inferred that the service will be repeated.
- D. Incidental Service - An organization is engaged in the performance of service incidental to railroad transportation when such functions would normally, in the absence of the organization, be performed by the constituent employers.
- F. Contract Services - If a railroad employer contracts work with non-railroad employees, this may allow the non-railroad employees to be covered under the Railroad Retirement Act as though they were railroad employees. A coverage determination needs to be made for the non-railroad employer.

#### **205.2.4 Receiver or Trustee**

Any receiver, trustee or other individual or body, judicial or otherwise, in possession of the property or operating all or any part of the business of any carrier is an employer ONLY with respect to individuals who would be employees, if the property or operation of the business had continued in possession of the preceding employer.

#### **205.2.5 Railway Labor Organizations**

The term "employer" includes railway labor organizations that are national in scope and organized in accordance with the provisions of the Railway Labor Act. "Employer" also includes the following railway labor organization subordinate units established according to constitution and by-laws:

- State and National legislative committees; and
- General committees; and
- Insurance departments; and
- Local Lodges and divisions.

## 205.3 Determining Employer Status

An initial coverage status determination must be made for every railroad employer and independent contractors performing services for covered employers. Investigators of the RRB's Audit and Compliance Section obtain the information necessary and submit it to the three-member Board for a formal determination.

The "Employment Data Maintenance (EDM) System" shows the status of all employers for which a determination has been made.

Under the law, it is the employer's responsibility to notify the RRB of any changes which may affect employer status. The coverage status is then reconsidered.

## 205.4 Creditability of Canadian Service

### 205.4.1 Work for a Canadian Employer

Service in Canada for an employer whose principal operation is in Canada is not creditable under the RRA.

### 205.4.2 Service in the United States

Service in the United States for an employer by any employee is fully creditable under the RRA.

### 205.4.3 U.S. Citizen Working in Canada for United States Employer

Service in Canada by a United States Citizen for a U.S. employer is fully creditable as service months and compensation.

### 205.4.4 Canadian Working in Canada for United States Employer

Service for a United States employer in Canada by a Canadian citizen or permanent resident of Canada is as follows effective 1-1-83 or later:

- A. This service preserves an employee/employer relationship for the establishment of current connection as explained in [FOM 225.35](#); and
- B. Otherwise, this service is not creditable under the RR Act and is considered to be non-railroad service:
  - 1. The earnings for January 1, 1983, or later are not creditable as compensation or wages; and
  - 2. The service performed January 1, 1983, or later cannot be used to establish service months under the RRA; and

3. The service performed January 1, 1983, or later has no effect on the annuity beginning date (ABD); and
4. The employee will be subject to last non-railroad employment (LPE) work deductions if he retires from the Canadian service within 6 months of his ABD.

EXAMPLE: The Canadian citizen works solely in Canada for Conrail and its predecessor railroads from 2-7-56 through 4-24-85, the month the employee attains age 63. The earnings and service months from 1-1-83 through 4-24-85 cannot be used in the annuity computation. The employee has a current connection. ABD for the reduced age and service annuity can be as early as 5-1-84, the first full month the employee is age 62. However, last person employment work deductions apply to his tier II benefit.

L-91-18 states the administrative finality is to be applied to the annuity when:

1. The employee annuity is paid including Canadian service 1978-1982 that was posted to Form G-90; and
2. The railroad service is later removed from the earnings record because the railroad or the employee received a refund of the tier taxes.

## 205.5 Electric Railways

An electric railway is considered to be an "employer" if it meets one of the following conditions:

- A. It is more than a street, suburban or interurban electric railway; or
- B. It is operating as a part of a general steam-railroad system of transportation; or
- C. It is part of the national transportation system.

## 205.6 Coverage Ruling for Mining of Coal

The term "employer" does NOT include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tiple and the operation of equipment or facilities or in any of such activities.

A person engaged in any of the following physical operations is NOT an employee:

- Coal mining;
- Preparation of coal;
- Loading coal at the mine tiple;

- Handling coal between the mine and the tipple, unless the handling consists of movement by rail with standard railroad locomotives.

## **205.7 Coverage Ruling for Missouri Pacific Truck Lines and the Texas Pacific Motor Transport Company**

As a result of a 1978 audit by the Internal Revenue Service (IRS), the Missouri Pacific Truck Lines (MPTL) and the Texas and Pacific Motor Transport Company were ruled to be employers under the Railroad Retirement Tax Act (RRTA). The court has reversed the IRS decision and ruled that these employers are not employers under the RRTA. 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 has advised that all wages for the concerned employees have been posted to their social security earnings record.

## **205.8 Coverage Ruling for Trans-Mark or Servitron, Inc**

### **205.8.1 Background**

Service by certain individuals with Trans-Mark, Inc. or Servitron, Inc. constitutes railroad service under the Railroad Retirement Act (RR Act).

In March 1969, the Kansas City Southern Railway Company (KCSR) 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 the Social Security Administration 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 RR Act.

At the time that this decision was made, a number of Trans-Mark and Servitron employees were receiving railroad retirement annuities based on their last day carried on the KCSR's payroll. Other individuals were receiving social security benefits based on the "wages" earned while employed by Trans-Mark or Servitron.

Because the crediting of Trans-Mark or Servitron service can affect current connection, SUPP closing data and REG ANN, SUPP ANN or spouse annuity entitlement, any previous RRB determination made based on the incorrect use of this service must be re-opened.

## **205.8.2 Field Office Handling**

Initial cases involving service with Trans-Mark or Servitron are marked for manual handling.

