Guarantee Payments

Guarantee Payments are employer payments under any merger, agreement or job protection arrangement that guarantees payment of compensation during periods when an employee has been deprived of employment. These payments are offered in the form of contracts, settlements and/or various agreements between management and its employees.

There will be situations that require a decision by the RRB, its General Counsel, or even a ruling in a federal court. This section reviews several of these type cases and provides a synopsis of each.

Court-ordered Pay for Time Lost (PTL)

Court ordered settlements of service and compensation must meet the criteria of all Pay for Time Lost (PTL) cases as prescribed by the Regulations. In some instances the courts may determine that service and compensation should be credited without consideration that their ruling does not meet the requirements of our regulations under the Railroad Retirement Act (RRA).

In a case of this nature the courts awarded an employee a PTL settlement of service and compensation for the period September 1, 1973 through June 30, 1983. However, the employee worked for a non-covered employer from September 1973 through March 1976. Also, the employee's earnings were higher than the amount of back pay that was paid through the PTL settlement.

The RRB disallowed the claim for the period September 1973 through March 1976. The Board determined that these were non-railroad wages that cannot be considered as compensation; and these wages exceeded the amount of the PTL, therefore no loss was incurred.

This information is referenced in Legal Opinion L-86-40, which is available upon request.

Discrimination Awards

Discrimination suits can also be awarded by court order but must also satisfy our regulations under the RRA.

In one such case, the judgment ordered that the payments made in the settlement and the taxes paid would be handled as follows:

- Credited to a prior period (August, 1985);
- 50% of award for back pay, wages, compensation, etc; and
- 50% of award for damages: "intentional infliction of mental or emotional distress."

However, some employees no longer worked for the employer.

RRB regulations require that a PTL settlement must be paid for an identifiable period of time, but NOT later than the termination of an employment relation. RRB denied credit after the employment relation terminated.

This information is referenced in Legal Opinion L-86-130, which is available upon request.

L-90-45 Longshoremen and Harbor Workers' Compensation Act (LHWCA)

The Longshoremen and Harbor Workers' Compensation Act (LHWCA), provides for a no-fault system of compensation payments for an on-the-job injuries. However, statutes in the LHWCA limit the liability and restrict the amount of the payments.

An Administrative Law Judge ordered a covered employer to make payments to an employee under the LHWCA. The employee appealed to have service months credited to the record for the period of lost time.

The RRB determined that the service and compensation is not creditable under the ACTS. The Board ruled that the payments under LHWCA were social insurance payments rather than compensation and that these payments were not considered compensation for railroad retirement tax purposes (26 U.S.C. 3231 (e)(4)).

This information is referenced in Legal Opinion L-69-10 and L-90-45, which is available upon request.

Rehabilitation Act of 1973

A class of covered employees who were receiving disability annuities under the Railroad Retirement Act were eligible to receive back pay awards under the Rehabilitation Act of 1973. The Board determined that claims awarded under this statute constituted PTL under the Acts. Back pay awards are generally considered creditable in the month the payment was awarded (paid).

The RRB ruled the payments are creditable under the Acts. However, any annuitant who received back pay would also be credited with an additional service month for each month that the back pay was credited. Consequently, the annuitant would forfeit their annuity for the month of payment and be required to repay any overpaid benefit amounts.

This information is referenced in Legal Opinion L-84-22, which is available upon request.

Job Stabilization Agreement

A group of labor organizations and most all of the Class 1 carriers are parties in an agreement commonly referred to as the "Feb 7th Job Stabilization Agreement" (JSA). That agreement provides certain employment and compensation guarantees to employees who have or obtain ten or more years of employment with those carriers as of February 7, 1965.

Under revisions to that agreement, updated on September 26, 1996, the guarantee covered employee compensation equivalent to their 1997 earnings. However, the agreement did not address the treatment of service months. This lack of service negatively impacted the employees' RUIA qualification.

The RRB ruled that employees, upon claim and proof of the guarantee payments, will be allowed creditable service months equivalent to the 1997 record of the RRB.

This information is referenced in Legal Opinion L-2002-13 and L-84-162, which is available upon request.

Clerical Training Program

A covered employer developed a Clerical Training Program for potential employees and would hire them upon completion as needed. The employer contended that these students were not employees until they successfully completed the program and placed themselves on a hiring board. The training program was developed in the following manner:

- Candidates applied through local RR division office, and those selected were scheduled to begin with the next class;
- Trainees received six weeks formal training and a two to four week period of on-the-job training (cubbing) with a journeyman employee;
- Students receive a daily allowance and a meal allowance; and
- Trainees that do not complete the program do not have employment rights.

The RRB ruled that the students who took the training course are considered employees and the allowances they received is creditable compensation based on the following criteria:

- The employer screened the applicants for the training class;
- The employer's introductory booklet refers to the "Hiring Officer" who furnished the training materials;
- The agreement was consensual in nature; and
- The employees were in the control and direction of the employer during the training.

This information is referenced in Legal opinion L-83-235, which is available upon request.