

## 211.1 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 (see [FOM 206.2](#)), 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 happen:

- A. The employee was paid by an employer, under certain conditions, for loss of earnings as a result of their temporary absence from work due to illness; or
- B. The employee was paid by an employer for an identifiable period of absence from active service, including absence due to personal injury; or
- C. The employee 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
- D. The employee was paid by an employer for an identifiable period for which an employment relation existed after their actual date last worked as the result of "dismissal pay" after abolishment of their job or an "early out" agreement. (Under this condition the employee must retain their job rights and receive monthly payments of remuneration over a specified period of time); or
- E. The employee was paid by an employer for loss of earnings as a result of abolition of the job.

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

### 211.2.1 Definition

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

- A. The railroad pays tier I, tier II, and supplemental annuity taxes for these payments; and
- B. The employee is carried on the payroll and paid all or part of their regular salary for an identifiable period during which they are considered absent from work; or
- C. The employee's return to service is contemplated, their name is carried on the seniority roster and they receive payment for an identifiable period when they are absent from work.

The purpose of the payment is to make the employee whole as if they had not lost time from work as a result of injury. This can be done through a wage continuation plan. The

employee receives service months while on the regular payroll. The railroad pays tier I and tier II taxes as they would for regular compensation.

If your field office has not been advised whether or not a specific sick pay salary or wage continuation plan qualifies as "Pay for Time Lost", obtain a copy of the plan and forward it to OP-RAS. RAS will request the Office of General Counsel (OGC) to review the plan and determine if it can be considered "Pay for Time Lost."

### **211.2.2 Effect on Railroad Unemployment Insurance Act**

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.

### **211.2.3 Effect on Employee Annuity**

An annuity under the Railroad Retirement Act (RRA) cannot 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 gets credit as if they were still performing railroad service. This type of pay must be entered as "Pay for Time Lost" on the APPLE APMU211 Application Information Recurring Annuities screen and the proof must be entered on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen. 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".

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

### **211.3.1 Years prior to 1982**

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

However, if the employee "cashed in" their unused sick days, that payment was considered tier I and tier II compensation.

### **211.3.2 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 I employment taxes. Sick pay had become subject to tier I taxes effective 01-01-1982, as a result of the 1981 Social Security Act amendments, and the corresponding amendment to the Railroad Retirement Tax Act. Since the RRA 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 RRA in 1983 extended the retroactivity of the tier I compensation credit to 1-1-82 (limited to the first 6 months after the date last worked (DLW-RR))

### **211.3.3 Changes Effective January 1, 1982, or later**

Effective with payments for January 1, 1982, or later, sick pay that is payable under a plan or agreement" that provides for sickness or accident disability, for up to 6 months after the actual DLW-RR, will be reported as "miscellaneous compensation." The "miscellaneous compensation" credit for sick pay is used solely to increase the earnings used to compute tier I of an employee, spouse or survivor annuity or to increase PIA 9 for the retirement overall minimum computation.

For example, The Atchison, Topeka and Santa Fe Railway Co. (ATSF) (BA 1702) has a short-term disability program for officers and exempt employees. These payments are made for the first 6 months after the DLW-RR and are creditable as tier I "miscellaneous compensation." They do not provide RR service months. The annuity beginning date (ABD) can be as early as the day after the DLW-RR.

The ATSF 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 7th month after the employee's actual DLW-RR, they are not creditable as tier I sick pay. These payments have no effect on the Railroad Retirement annuity.

The entries on the APPLE APMU211 Application Information Recurring Annuities screen and the proof entered on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen 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 need to 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.

### **211.3.4 When Sick Pay is Not Creditable as Miscellaneous Compensation**

Sick pay is not creditable as tier I compensation if:

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

### **211.3.5 How Sick Pay is Reported to the RRB**

The employee is not carried on the railroad's payroll. The payment is not based on all or part of the employees regular salary. This payment can be made from any source (including an insurance company as a third party payee, sickness insurance (SI) benefits under the RUIA or benefits from a nongovernmental plan).

RUIA sickness insurance payments are reported to the Employment Data Maintenance (EDM) System as tier I 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."

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

### 211.3.6 Definition of Plan or Agreement and Nongovernmental Plans

A. Plan or Agreement - The term "plan or agreement" for miscellaneous compensation means that the payments are based on a plan or agreement established by an employer that makes provision for their employees generally or for a class or classes of employees, and their dependents, due to 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 due to a personal injury or sickness.

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

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

B. Nongovernmental Plan – A nongovernmental plan is defined in the RUIA. It is a formal, written plan under which the employee has an enforceable right to benefits for days on which the employee is absent from work due to sickness or injury. A nongovernmental plan has these characteristics:

1. The plan covers a specified group of employees and may or may not be the result of a collective bargaining agreement.
2. 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 may pay benefits.

3. Benefits are not based on the employee's salary and can continue for as long as the employee is absent from work due to sickness or injury, or they may be limited to a certain number of days or weeks.
4. Benefits under the plan must be reduced by sickness insurance benefits under the RUIA.

### **211.3.7 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.

### **211.3.8 Effect on Employee Annuity**

Credit is not given for railroad service months or for tier II compensation. The DLW-RR and the ABD are not affected, since service months are not credited.

### **211.3.9 Effect of Miscellaneous Compensation on Work Deductions**

The miscellaneous tier I compensation, up to the tier I yearly maximum, is based on an identifiable 6-month period for which sickness benefits are payable. However, the miscellaneous compensation is actually 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 I work deductions. Therefore, the miscellaneous compensation is included in the tier I work deduction component (PIA 2) as if it were "wages."

## **211.4 Personal Injury Payments**

### **211.4.1 When Considered Pay for Time Lost**

A payment made to an employee by their employer due to 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 workers compensation law or public disability is not RRA compensation paid for time lost. These benefits are paid under a state or federal workers 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 workers compensation pay or a public disability benefit.

#### **211.4.2 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:

- A. The personal injury payment was made after the employee returned to active employer service; or
- B. 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 can be allocated to the date last worked (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 due to 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 can 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 must also file a corrected earnings report for the employee within 4 years. This change can affect the annuity beginning date.

#### **211.4.3 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 that 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 can receive tier I credit for "pay for time lost" subject to the annual tier I maximum. Tier II credits are still subject to the tier II 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 \$100.00.

#### **211.4.4 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 report. However, when the period of "pay for time lost" due to personal injury is in the lag period, the applicant reports the settlement, or pending settlement on the APPLE APMU211 Application Information Recurring Annuities screen.

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

Otherwise, the RRB field office must secure a copy of the settlement agreement, including the following information:

- A. The amount and date of the payment; and
- B. The reason for the payment; and
3. The beginning and ending dates of the identifiable period creditable as railroad service months in the settlement.

When possible, the proof can be entered on the APPLE APMU955 Settlement/Dismissal Pay/Sick Pay screen before the application is released to Headquarters.

A photocopy of the settlement papers needs to be forwarded to the RBD-RIS supervisor to be imaged to the claim file.

The settlement will probably affect the annuity beginning date. If the settlement is still pending when the application is released to Headquarters, ask the applicant to designate an ABD that will be after the ending date of the settlement.



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

### **211.5.1 General**

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

- A. Retaining their job rights and receiving monthly payments of compensation over a specified period of time; or
- B. Giving up their 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 their job rights.

### **211.5.2 Description and Effect of "Monthly Compensation Payments"**

"Monthly compensation payments" are payments of remuneration to an employee who retains their 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, their annuity cannot begin until after the end of the period for which payments are made. The payments are "pay for time lost" under the RRA and creditable as service and compensation.

### **211.5.3 Description and Effect of "Separation Allowance"**

A "separation allowance" is a payment of remuneration to an employee who has relinquished their job rights. The payments can be spread over a period of time and reported for that period, or the allowance can 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 date last worked or on relinquishment of rights.)

Regardless of whether the separation allowance is paid in a lump-sum or paid in a series of installments, it cannot be used to credit the employee with railroad service for months following the month in which the employee was separated from service by relinquishing their rights. For computational purposes, tier I can be credited up to the



annual maximum for the year last worked and tier II can 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 their rights.

EXAMPLE: An employee's date last worked is 05/31/1986. They were on leave of absence for the months of January through April 1986. They returned to work in May 1986. The employee accepts a separation allowance which is also effective 05/31/1986. The employee files for an annuity to begin on 06/01/1986. Their actual earnings for 1986 are \$1,500.00. The separation allowance is \$100,000.00 and is credited to May 1986. For 1986, they would be credited with \$42,000.00 (the annual maximum) in tier I and \$12,125.00 (5 months at the monthly maximum of \$2,425.00) in tier II. The employee receives credit for 1 actual service month and 4 deemed railroad service months for 1986.

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

#### **211.5.4 Effect on RUIA**

An employee who elects to take "monthly compensation payments" is getting a railroad service month credit for each month and cannot 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 their job rights. Separation allowances can affect the payment of RUIA benefits, as under the Title VII program, which is explained in [FOM 212](#).

#### **211.5.5 Effect on Employee Annuity**

- A. Possible Effect on Current Connection - The requirements for a "deemed current connection" are in FOM 225.105. 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 their seniority rights will generally be considered to have voluntarily terminated railroad service. Questionable "deemed current connection" cases are referred to the Office of General Counsel.

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 their "relinquishment of rights." In either case, work outside the railroad industry following the 30-month period may break the employee's regular current connection.

- B. 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 the employee did not relinquish their 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.
- C. Separation Allowance for Work Deduction Purposes - Under the RR Act, separation allowances are considered to be earnings for work deduction purposes. Regarding 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.

## **211.6 Payments upon Reinstatement after Layoff**

### **211.6.1 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 the employee 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.

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

