

## § 203.2

not beyond the mine tipple, or the loading of coal at the tipple.

An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation, or a method of computing the monthly compensation for such service is provided in section 3(c): *Provided, however*, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of

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the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further*, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

### § 203.2 General definition of employee.

An individual shall be an employee whenever (a) he is engaged in performing compensated service for an employer or (b) he is in an employment relation to an employer, or (c) he is an employee representative, or (d) he is an officer of an employer.

### § 203.3 When an individual is performing service for an employer.

(a) The legal relationship of employer and employee is defined by the act. Thus, an individual is performing service for an employer if:

(1) He is subject to the right of an employer, directly or through another, to supervise and direct the manner in which his services are rendered; or

(2) In rendering professional or technical services he is integrated into the staff of the employer; or

(3) He is rendering personal services on the property used in the operations of the employer and the services are integrated into those operations.

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(b) The provisions in paragraph (a) of this section are controlling irrespective of whether the service is performed on a part-time basis, and, with respect to paragraph (a)(1) of this section, irrespective of whether the right to supervise and direct is exercised.

### § 203.4 When service is compensated.

Service shall be "compensated" if it is performed for compensation, as that term is defined in part 222 of this chapter: *Provided, however,* That service prior to September 1941 of a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations shall be considered compensated service although the individual's remuneration was, in whole or in part, in the form of tips. (For the effect of compensation of less than \$3.00 per month earned after December 31, 1936, for service to a local lodge or division of a railway-labor-organization employer, see part 222 of this chapter.)

(Sec. 3, 50 Stat. 310, as amended; 45 U.S.C. 228c)

### § 203.5 Service outside the United States.

(a) An individual shall not be an employee by reason of rendition of service to an employer other than a local lodge or division, or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States except while engaged in performing service for it in the United States.

(b) An individual shall not be an employee by reason of rendition of service to a local lodge or division, unless:

(1) All, or substantially all the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(2) The headquarters of such local lodge or division is located in the United States.

(c) An individual shall not be an employee by reason of rendition of service to a general committee of a railway-labor-organization employer, unless:

(1) Such individual is representing a local lodge or division, all or substan-

tially all of whose members are employees of an employer conducting the principal part of its business in the United States, or the headquarters of such local lodge or division is located in the United States; or

(2) All or substantially all the individuals represented by such a general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) Such an individual acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer; *Provided, however,* That if the office or headquarters of such general chairman or assistant general chairman is not located within the United States he will not be an employee unless 10 percent or more of his remuneration for service as general chairman or assistant general chairman is creditable as compensation, the creditable compensation to be computed according to the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, or according to a formula to be prescribed by the Board if the mileage formula is inapplicable.

### § 203.6 Age, citizenship, and other factors.

The age, citizenship, or residence of an individual, or his designation as other than an "employee" shall not be controlling in determining whether or not such individual is an employee within the meaning of the act, except that an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required by the laws of the place where the service is performed to employ, in whole or in part, citizens or residents thereof and the laws in force therein on August 29, 1935, shall be deemed to have been in force at all times prior to that date.

[Board Order 55-89, 20 FR 3706, May 27, 1955]

### § 203.7 Local lodge employee.

An individual who, prior to January 1, 1937, shall have rendered service to a