

local lodge or division of a railway labor organization included as an employer under section 1(a) of the act, shall be an employee with respect to such service to such local lodge or division only if he was on August 29, 1935, in the service of or in an employment relation to an employer which was a carrier. An individual who, subsequent to December 31, 1936, shall have rendered service to a local lodge or division of a railway labor organization included as an employer under section 1(a) of the act, shall be an employee with respect to such service to such local lodge or division only with respect to such service as was preceded by service, or an employment relation, on or after August 29, 1935, to an employer which was a carrier. (For the effect of compensation 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.)

## PART 204—EMPLOYMENT RELATION

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### § 204.1 Introduction.

In order for an individual to receive credit under the Railroad Retirement Act (Act) for railroad service prior to 1937, he or she must establish that he or she was actively working for an employer under the Act on August 29, 1935, or was in an employment relation to an employer on that date. Section 204.3 of this part defines employment relation for purposes of establishing prior service. It is also necessary to establish an employment relation to an employer for any month in which an

individual wishes to receive a deemed service month, as provided for in § 210.3 of this chapter, and to receive credit for pay for time lost as provided for in § 211.3 of this chapter. This part defines employment relation for these purposes. See §§ 204.5 and 204.6. In addition, in order for an individual to have his or her service to a local lodge or division of a railway labor organization considered as creditable service under the Act, he or she must establish that he or she was working for a railroad or in an employment relation to a railroad on or after August 29, 1935, and that such employment or employment relation preceded his or her service to the local lodge or division. Section 204.7 defines employment relation for this purpose.

### § 204.2 Employment relation—determination by the Board.

The existence or non-existence of an employment relation, as defined in this part, is a conclusion which must be reached by the Board or its authorized officers or employees upon the basis of the evidence before the agency. The employer and the employee are the principal sources of evidence with respect to a determination whether an employment relation existed, but the Board will not be bound by the mere conclusion of the employer or the employee that the employee had or did not have an employment relation.

### § 204.3 Employment relation—prior service.

An individual shall have an employment relation to an employer on August 29, 1935, for purposes of crediting service prior to January 1, 1937, if:

(a) He or she was in the service of an employer on that date; or

(b) He or she was on that date on leave of absence expressly granted by the employer or by a duly authorized representative of such employer, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(c) He or she was in the service of an employer after that date and before January 1946, in each of six calendar months, whether or not consecutive; or

(d) Before that date he or she did not retire and was not retired or discharged from the service of the last

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employer by whom he or she was employed, but solely by reason of a physical or mental disability he or she ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he or she attained age sixty-five or until August 1945; or

(e) Solely for the reason stated in paragraph (c) of this section an employer by whom he or she was employed before August 29, 1935, did not on or after August 29, 1935, and before August 1945, call him or her to return to service, or if he or she were called to return to service he or she for such reason was unable to render service in six calendar months as provided in paragraph (b) of this section; or

(f) He or she was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his or her reinstatement in good faith to his or her former service with all his or her seniority rights.

### § 204.4 Conditions which preclude an employment relation.

(a) An individual shall not have been on August 29, 1935, an employee by reason of an employment relation if, during the last payroll period in which he or she rendered service to an employer prior to that date, such service was rendered outside of the United States to an employer not conducting the principal part of its business in the United States.

(b) An individual may not acquire an employment relation solely by virtue of service to a local lodge or division of a railway labor organization.

### § 204.5 Employment relation—deemed service.

For the purpose of crediting deemed service months as provided in § 210.3(b) of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be deemed. For that purpose an employment relation exists with respect to any month in

which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer or after the individual becomes entitled to receive an annuity under the Railroad Retirement Act.

### § 204.6 Employment relation—pay for time lost.

For the purpose of crediting pay for time lost as provided in § 211.3 of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be credited with pay for time lost. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer.

### § 204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Service by an individual to a local lodge or division of a railway labor organization shall be creditable under the Railroad Retirement Act only if, prior to such service, and on or after August 29, 1935, such individual performed compensated service for a carrier employer under part 202 of this chapter or was in an employment relation to such a carrier employer under the rules set forth in § 204.3 of this part.