

compensation or if the employee challenges the accuracy of the rate reported by the employer. Unless deemed unreasonable, a daily rate of compensation reported by an employee under this paragraph will be used provisionally to compute his or her daily benefit rate, but such rate will be verified in accordance with paragraph (c) of this section. In any case in which the employee's report is deemed unreasonable and no employer report has been provided, the employee's report shall be disregarded, and the Board will seek to verify the employee's last daily pay rate in accordance with paragraph (c) of this section. Pending receipt of such verification, the employee's daily benefit rate shall be set at \$12.70. When an unverified and uncorrected pay rate has been verified or corrected, appropriate redetermination of the daily benefit rate shall be made, and such redetermined benefit rate shall be applied to all the employee's days of unemployment or sickness in the benefit year.

(c) *Employer verification.* Whenever an employee has established a daily rate of compensation under paragraph (b) of this section, the Board will request the employee's base year employer to verify such rate within 30 days. If such verification is not received within 30 days, the employee's daily rate of compensation may be based upon other evidence gathered by the Board if such evidence is reasonable in light of compensation rates reported for other employees of the base year employer in the same occupation or class of service as the employer or in light of previous compensation rates reported by the base year employer for its employees. A daily benefit rate established under this paragraph may not exceed the maximum daily benefit rate established under this part.

(d) *Protest.* An employee who is dissatisfied with the daily benefit rate computed under this part may contest such computation in accordance with part 320 of this chapter.

(Approved by the Office of Management and Budget under control numbers 3220-0007, 3220-0008 and 3220-0097)

PART 332—MILEAGE OR WORK RESTRICTIONS AND STAND-BY OR LAY-OVER RULES

Sec.

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AUTHORITY: 45 U.S.C. 362(l).

SOURCE: Board Order 59-95, 24 FR 3372, Apr. 30, 1959, unless otherwise noted.

§ 332.1 Statutory provisions.

* * * (1) a day of unemployment with respect to any employee, means a calendar day on which he is able to work and is available for work and with respect to which * * * no remuneration is payable or accrues to him * * * and (2) a "day of sickness", with respect to any employee, means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease he is not able to work, or, with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health, and with respect to which * * * no remuneration is payable or accrues to him * * * *Provided, further,* That any calendar day on which no remuneration is payable to or accrues to an employee solely because of the application to him of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because he is standing by for or laying over between regularly assigned trips or tours of duty shall not be considered either a day of unemployment or a day of sickness. (Section 1(k), Railroad Unemployment Insurance Act)

[Board Order 68-72, 33 FR 11115, Aug. 6, 1968]

§ 332.2 General considerations.

(a) *Classes of service covered.* Conditions under which remuneration with respect to a day may not be payable to or accrue to an employee solely because of the application to him of a mileage or work restriction exist in train-and-engine service, yard service, dining-car service, sleeping-car service, and other Pullman-car service, and similar service, and express service on trains. In the determination of a claim for benefits of an employee in any

other service, the employee's lack of remuneration with respect to any claimed day shall be presumed not to be due solely to the application of a mileage or work restriction. Conditions under which remuneration with respect to a day may not be payable to or accrue to an employee solely because he is standing by for or laying over between regularly assigned trips or tours of duty exist in train-and-engine service, dining-car service, sleeping-car service, and other Pullman-car service, and similar service, and express service on trains. In the determination of a claim for benefits of an employee in any other service, the employee's lack of remuneration with respect to any claimed day shall be presumed not to be due solely to his standing by for or laying over between regularly assigned trips or tours of duty.

(b) *Sickness claims.* An employee who, in connection with a claim to a day as a day of sickness, is held to be not able to work because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease shall not be considered to lack remuneration with respect to such day solely because of the application to him of mileage or work restrictions or solely because he is standing by for or laying over between regularly assigned trips or tours of duty. Nor shall a female employee be considered to lack remuneration with respect to a day solely because of the application to her of mileage or work restrictions or solely because she is standing by for or laying over between regularly assigned trips or tours of duty if the day is one on which, because of pregnancy, miscarriage, or the birth of a child, (1) she is unable to work or (2) working would be injurious to her health.

[Board Order 59-95, 24 FR 3372, Apr. 30, 1959, as amended at 26 FR 8593, Sept. 14, 1961; Board Order 68-72, 33 FR 11115, Aug. 6, 1968]

§ 332.3 Mileage and work restrictions.

Subject to the provisions of § 332.2(b), a day shall not be considered as a day of unemployment or as a day of sickness with respect to an employee if no remuneration is payable or accrues to him solely because of the application to him of a mileage or work restriction agreed upon in a written agreement be-

tween his employer and employees of his employer, or authorized pursuant to such written agreement. Provisions of agreements setting overtime or other premium rates of pay shall not be regarded as work restrictions. Mileage or work restrictions shall be considered as applicable to an employee with respect to any day on which he is out of service because of having reached or exceeded the maximum mileage, earnings, or hours of work prescribed in such an agreement, or authorized pursuant to such an agreement. Performance of other work by an employee while he is out of service because of having reached or exceeded the maximum mileage, earnings, or hours of work shall not serve to make the mileage or work restriction inapplicable to him.

§ 332.4 Restrictions in extra service.

Mileage or work restrictions shall be considered to exist in rotating extra board, pool, or chain gang service when there is in effect an arrangement between the employer and its employees for increasing or decreasing the number of employees in such service according to the amount of work available. When the arrangement is such that an employee in extra board, pool, or chain gang service gets the equivalent of full-time work, his lack of remuneration on any non-work day shall, subject to the provisions of § 332.2(b), be considered as due solely to the application to him of a mileage or work restriction.

§ 332.5 Equivalent of full-time work.

An employee who has the equivalent of full-time work with respect to service on days within a registration period is not eligible for unemployment benefits for any non-work days within such registration period. In determining whether an employee has the equivalent of full-time work, the Board will consider the provisions of labor-management agreements that prescribe the number of miles or hours of credit constituting a basic work day, week, or month in the employee's occupation or service. The Board will consider that an employee had the equivalent of full-time work if the number of miles or hours credited to the employee for