Railroad Retirement Board

§ 322.8 Miscellaneous income.

(a) Income from self-employment. In determining whether income from self-employment is remuneration with respect to a particular day or particular days, consideration shall be given to whether, and to what extent, (1) such income can be related to services performed on the day or days and (2) the expenses of the self-employment can be attributed to the day or days. Income from services performed by an individual on a farm which he owns or rents, or in his own mercantile establishment, ordinarily is not remuneration with respect to any day.

(b) Income from investment. Income in the form of interest, dividends, and other returns on invested capital which is not coupled with the rendition of personal services shall not be regarded as remuneration.

(c) Commissions on sales. Commissions on sales shall be regarded as remuneration with respect to the day or days on which sales are made.

(d) Payments for service as a public official. In determining whether income for service as a public official is remuneration and, if so, the particular day or days with respect to which such remuneration is payable or accrues, consideration shall be given to such factors as—

(1) The amount of the income;
(2) The terms and conditions of payment;
(3) The character and extent of the services rendered;
(4) The importance, prestige, and responsibilities attached to the position;
(5) The day or days on which services, or readiness to perform services, are required; and
(6) The provisions of the applicable statutes.

(e) Payments to local lodge officials. A payment by a local lodge of a labor organization to an employee for services as a local lodge official shall be regarded as subsidiary remuneration if such payment does not exceed an average of $15 a day for the period with respect to which it is payable or accrues, unless there is information that the

[65 FR 14460, Mar. 17, 2000]
§ 322.9 Subsidiary remuneration.

(a) Definition. The term “subsidiary remuneration” means remuneration not in excess of an average of $15 per day for the period with respect to which it is payable or accrues, if:

(1) The work from which the remuneration derives requires substantially less than full time as determined by generally prevailing standards; and

(2) The work is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(b) Exception. If a claimant’s remuneration is “compensation” as defined in part 302 of this chapter, such remuneration is not subsidiary unless the claimant had base year compensation from a different position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(c) Period for which remuneration is payable or accrues. The “period” of time used in determining whether remuneration averages more than $15 per day depends on the terms and conditions of the employment and the rate of payment for the work. If the claimant is paid a monthly salary, the “month” is the period with respect to which the pay must average not more than $15 per day. The average is the monthly salary divided by 30. If the claimant is paid a weekly salary, the amount of the salary is divided by seven. If the claimant is paid by the hour or the day, the “period” is the day. Where payment is made by the hour or the day, the pay is not added up and then averaged out over the week or the month. For example, earnings of $20 on one day and $10 on another day do not average out to $15 per day so as to permit both days to be considered as days of unemployment or days of sickness.

(d) Substantially less than full time. The phrase “substantially less than full time” means employment of not more than four hours per day.

(e) Compatibility with full time employment. Work is considered to be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(f) Determinations. The Board shall make a determination whether remuneration is subsidiary by applying the standards in this section to the facts of each case. Earnings that average more than $15 per day are not subsidiary remuneration under any circumstances. Also, earnings of any amount that are included in a claimant’s qualifying base year compensation are not subsidiary remuneration. Even if earnings do not exceed an average of $15 per day, they may still not be subsidiary remuneration if the work had to be performed at such times and under such circumstances as to be inconsistent with the holding of normal full-time work in his or her regular railroad job. If the evidence does not establish that the earnings are subsidiary remuneration, the question whether they are remuneration for particular days will then be considered.

(g) Examples. The following examples illustrate this section.

(1) A claimant receives a salary of $350 per month for serving as secretary-treasurer of the local lodge of his union. He performs a variety of duties at his own convenience while holding down a full-time railroad job in his craft. The average payment per day is not more than $15 and is, therefore, subsidiary remuneration.