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Mr. Robert G. Brave
Executive Director
Little Rock Port Authority
7500 Lindsey Road
Little Rock, Arkansas 72206

Dear Mr. Brave:

Your letter dated January 24, 1979, addressed to Mr. Henry Crowe, district manager of the Railroad Retirement Board's office in Little Rock, Arkansas, has been referred to me for consideration and reply. You have asked whether track inspection work which would be performed by an individual pursuant to a contract with the Little Rock Port Authority Railroad would adversely affect that individual's entitlement to an annuity under the Railroad Retirement Act.

As you may know, section 2(e)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. § 231a(e)(1)) provides that in order to become eligible to receive an annuity under that Act, an individual must cease all employment for compensation, whether with a railroad or with any other person. Thereafter, as is provided by section 2(e)(3) of the Act (45 U.S.C. § 231a(e)(3)), no annuity will be payable for any month in which the annuitant renders compensated service as an employee of a railroad or of the last person by whom he was employed prior to his annuity beginning date. For your information, the pertinent provisions of section 2(e) are quoted below:

"(1) No individual shall be entitled to an annuity * * * until he shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1(a) (but with the right to engage in other employment to the extent not prohibited by subdivision (3) or (4) of this subsection or by subsection (f)). * * *

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"(3) No annuity * * * or supplemental annuity * * * shall be paid with respect to any month in

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which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer or to the last person, or persons, by whom he was employed prior to the date on which the annuity * * * began to accrue.
* * *

The provisions quoted above apply only to service rendered as an employee. If the individual is working as an independent contractor or other self-employed person, then the above-mentioned employment restrictions would not be applicable. In determining whether an individual is functioning as an independent contractor rather than as an employee, the Board applies the criteria that typically are applied in such cases. That is, the Board considers the following factors, no one of which is conclusive: (1) the extent of control which, either in practice or by the agreement, the employer may exercise over the details of the work; (2) whether or not the one employed is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether the work usually is done under the direction of the employer or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the employer or the workman supplies the instrumentalities, tools, and place of work for the person doing the work; (6) the length of time for which the person is employed; (7) the method of payment, whether by the time or by the job; (8) whether or not the work is a part of the regular business of the employer; and (9) whether or not the parties believe they are creating the relationship of master and servant.

Unless I receive a copy of the track inspection contract, it would not be possible for me to express an opinion with regard to the particular case with which you are concerned. If you would care to submit a copy of the contract to this office for my consideration, please feel free to do so.

I trust that the foregoing information will be of assistance to you.

Very truly yours,

Dale G. Zimmerman
General Counsel

cc: District Manager
Little Rock, Arkansas

JRS:dg