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Mr. P. C. Garrott
General Claim Agent
The Baltimore and Ohio Railroad
Company
Office of General Claim Agent
Baltimore 1, Maryland

Re: Claim No. 31257-e

Dear Mr. Garrott:

I have your letter of July 5, 1961, in which you put two questions. The first, is it permissible in a settlement for a personal injury to allocate to "time lost" the number of additional months of service beyond the date of the settlement required to give the employee the necessary 23 $\frac{1}{4}$ months of service (the ultimate fraction of six months would be taken as one year, making a total of 20 years) to enable him to qualify for an occupational disability annuity at the end of such 20 years of service. The answer to this question is yes. But, as indicated in my letter of August 31, 1950, to which you refer, this answer assumes that the employer-employee relation is not terminated before the expiration of the month to be counted as the 23 $\frac{1}{4}$ th month of service, for it is essential that a finding could be made that the employee actually lost, from the employer's service, the time to which the payment was allocated. (Of course, only ten years of service are necessary for an occupational disability annuity if the individual has reached age 60.)

As to your second question, if, in these circumstances, the employee performed at another different kind of job, a non-railroad job, during the period between the settlement and the expiration of the month to be counted as the 23 $\frac{1}{4}$ th month of railroad service, this circumstance in and of itself would not affect his eligibility for an occupational disability annuity as of the end of such period, again assuming that nothing is done until then to affect or cut short his relation as an "employee" with his "employer" under the Act. So long as this relation is maintained and he is paid for "time lost" for this period, he will not have lost his "current connection with the railroad industry" (which is essential to the award to him of an occupational disability annuity, irrespective of the number of his years of service) at the time the period ends.

Mr. P. C. Garrott

This "current connection" requirement is, generally, that the employee have at least 12 months of service as an employee in a 30-consecutive-month period before the accrual date of his annuity. If the 30-consecutive-month period in which he has such 12 months of service as an employee does not immediately precede the accrual date, he must not have had any regular employment other than employment for an "employer" under the Act. But a period properly allocable to "time lost" may be counted towards this requirement of 12 months service as an employee. (Postponement of his "retirement" to a period substantially beyond the expiration of his "time-lost" period would, of course, bring into play this rule that if the 30-month period does not immediately precede the accrual of the annuity, any regular employment outside the industry in the period of the interval, will terminate the "connection".)

The employee would, of course, have to cease all compensated employment for any employer before his annuity would begin to accrue and be paid to him. And during the period covered by any part of a payment apportioned to "time lost", an individual cannot be considered entitled to a retirement annuity or to unemployment insurance or sickness benefits.

Very truly yours,

Myles F. Gibbons
General Counsel

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