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The Director of Unemployment and Sickness Insurance

The Associate General Counsel

Your Memorandum of August 8, 1961
Application of Third Proviso of Section 1(k) of Railroad
Unemployment Insurance Act

With reference to the third proviso of Section 1(k) of the Railroad Unemployment Insurance Act, you ask whether on their non-work days regularly assigned employees in yard service should be considered to be "standing by for or laying over between regularly assigned trips or tours of duty". In this connection you point out that the national agreement providing a five-day work week for yard-service employees represented by the Brotherhood of Railroad Trainmen does not contain the terms "laying over" or "lay-over days", but refers to the non-work days of regularly assigned employees as "days off".

As stated in your memorandum, regularly assigned employees in yard service usually work eight hours a day, five days a week. In this respect they are like most of the non-operating employees in the railroad industry, but are unlike employees in road service. The trips or tours of duty of road-service employees are, as you point out, of varying length and frequency, depending on distances between terminals and other factors, and they often involve lay-over away from the home terminal, something which obviously does not occur in yard service.

It appears from the factors stated in your memorandum, and referred to above, that the words "standing by for or laying over between regularly assigned trips or tours of duty", while properly applicable in road service, are not descriptive of conditions prevailing in yard service. Consequently, it is my opinion that in administering the third proviso of Section 1(k), those words should not be applied to employees in yard service.* I suggest that you prepare and submit to

* The third proviso was inserted in Section 1(k) of the Unemployment Insurance Act by Public Law 234, 82nd Congress, 1st Session, 65 Stat. 691, which struck out the disqualification provisions formerly contained in Section 4(a-1)(iii) and (iv) of the Act. Yard service was one of the classes of service mentioned in the stricken provisions. However, the legislative history makes it clear that the purpose of the amendments was "to minimize the present restrictions with respect to services now covered" (Senate Report No. 890, 82d Congress, 1st

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the Board an appropriate amendment to Section 332.2(a) of the Regulations.

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* (Continued)

Session, page 29), and there is nothing to indicate an intention to have the language of the proviso applied to situations which it does not describe.