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Director of Data Processing and Accounts

General Counsel

Creditable Service - Training Program

This is in reply to your memorandum dated April 10, 1980, wherein you requested my opinion as to whether payments received by student participants in a brakeman/switchman training program of the Southern Pacific Transportation Company constitutes creditable compensation within the meaning of the Railroad Retirement and Railroad Unemployment Insurance Acts.

DISCUSSION

The term "employee" is defined by section 1(b)(1) of the Railroad Retirement Act as meaning "any individual in the service of one or more employers for compensation * * * any individual who is in the employment relation to one or more employers * * *." Under section 1(d)(1) of the Act an individual is in the service of an employer if "he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service." Under section 1(h)(1) of the Act "compensation" is defined as "any form of money remuneration paid to an individual for services rendered as an employee to one or more employers."

It is apparent under the above definitions that for an individual to be an employee under the Act he must be compensated. It is not clear from your memorandum whether the individuals in this case are receiving remuneration or merely an allowance for expenses. However, from the fact that the daily rate of pay for the entire training period is stated to be \$24.80, thereby meeting the current minimum wage standard for an eight hour day, it may be reasonably concluded, there being no probative evidence to the contrary, that such payment is in fact remuneration.

Additionally, for an individual to be an employee he must be subject to the employer's supervision and direction in the service he performs. Employment, as contemplated under the Railroad Retirement and Railroad Unemployment Insurance Acts, is a consensual arrangement. Accordingly, an individual may agree with an employer to enter an employment relation which is commenced by a period of training as was, in effect, the situation in the case described in General Counsel's opinion L-78-597.

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In this regard, it should be recognized that the employer in General Counsel's opinion L-78-597 reported the moneys paid for the training as compensation. Ordinarily, where an individual is attending a class or receiving instruction other than on-the-job training, that individual is not "subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service."

Therefore, since the payment in question is to be considered remuneration, it remains to determine whether or not a trainee was "subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service." If continuing authority of the employer is present, then the remuneration in question is compensation creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts. In this instance, it appears that the "continuing authority" test clearly is met in at least the third week of the three week training program, since during that week the training period culminates when the trainees participate in actual on-the-job training under the supervision of a conductor. They have been prepared for this by the two prior weeks of classroom study. Therefore, the trainees must be considered as being within the "continuing authority" of the employer throughout the entire training period.

CONCLUSION

Where, as here, remuneration equal to or in excess of the current minimum wage is being paid by an employer under the Acts to trainees, who are in some substantial portion of the training period clearly shown to be within the "continuing authority" of such employer, such remuneration is to be treated as compensation and credited under the Acts for the period wherein it was earned unless substantial and convincing evidence to the contrary is shown. No such evidence appearing in this case, I conclude that the service in question is creditable under the Acts.

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