

SUBCHAPTER B—REGULATIONS UNDER THE RAILROAD RETIREMENT ACT

PART 201—DEFINITIONS

AUTHORITY: Secs. 1, 10, 50 Stat. 307, as amended, 314, as amended; 45 U.S.C. 228a, 228j.

§ 201.1 Words and phrases.

For the purposes of the regulations in this chapter, except where the language or context indicates otherwise:

(a) *Act*. The term “act,” or “1937 act” means the Railroad Retirement Act of 1937 (50 Stat. 307; 45 U.S.C. chapter 9). The term “1935 act,” means the Railroad Retirement Act of 1935 (49 Stat. 967; 45 U.S.C. chapter 9).

(b) *Employer*. The term “employer” means an employer as defined in the act and part 202 of this chapter.

(c) *Employee*. The term “employee” means an employee as defined in the act and part 203 of this chapter.

(d) *Service*. The term “service” means service as defined in the act and part 220 of this chapter.

(e) *Compensation*. The term “compensation” means compensation as defined in the act and part 222 of this chapter.

(f) *Board*. The term “Board” means the Railroad Retirement Board.

(g) *Company*. The term “company” means a partnership, association, joint stock company, corporation, or institution.

(h) *United States*. The term “United States” where used in a geographical sense means the States and the District of Columbia.

(i) *Carrier*. The term “carrier” means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (24 Stat. 379; 49 U.S.C. chapter 1).

(j) *Person*. The term “person” includes an individual, trust, estate, partnership, association, joint stock company, company, corporation, and institution.

(k) *General Committee*. The term “General Committee” as used in section 1 of the Railroad Retirement Act of 1937 (50 Stat. 307; 45 U.S.C., Sup., 228a) is construed to include any subor-

dinate unit of a national railway labor organization, defined as an employer in the 1937 act, regardless of the title or designation of such unit, which, under the constitution and bylaws of the organization of which it is a unit, is properly authorized to and does represent that organization on all of a particular railroad or on a substantial portion thereof (such as on that portion of a railroad under the jurisdiction of the general manager) in negotiating with the management of that railroad with respect to the wages and working conditions of the employees represented by such organization.

(1) *Local lodges and divisions; local lodge or division*. The term “local lodges and divisions” and the term “local lodge or division” as used in section 1(a) and 1(b), respectively, of the 1937 act, shall be construed to include any subordinate unit of a national railway labor organization defined as an “employer” under the 1937 act, which unit functions in the same manner as, or similar to “local lodges” as that term is ordinarily used, irrespective of the designation of such unit by its national organization.

[4 FR 1477, Apr. 7, 1939, as amended by Board Order 40-367, 5 FR 2717, Aug. 1, 1940; Board Order 59-190, 24 FR 9083, Nov. 7, 1959]

PART 202—EMPLOYERS UNDER THE ACT

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AUTHORITY: Secs. 1, 10, 50 Stat. 307, as amended, 314, as amended; 45 U.S.C. 228a, 228j, unless otherwise noted.

SOURCE: 4 FR 1478, Apr. 7, 1939, unless otherwise noted.

§ 202.1 Statutory provisions.

The term "employer" means any carrier (as defined in subsection 1(m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway

Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and by-laws of such organizations. (Sec. 1 (a), 50 Stat. 307; 45 U. S. C. 228a (a))

The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tippie, and the operation of equipment or facilities therefore, or in any of such activities. (54 Stat. 785; 45 U.S.C. 228a (a))

[4 FR 1478, Apr. 7, 1939, as amended by Board Order 41-526, 7 FR 96, Jan. 6, 1942]

§ 202.2 Company or person principally engaged in carrier business.

Any company or person principally engaged in carrier business is an employer.

§ 202.3 Company or person principally engaged in non-carrier business.

(a) With respect to any company or person principally engaged in business other than carrier business, but which, in addition to such principal business, engages in some carrier business, the Board will require submission of information pertaining to the history and all operations of such company or person with a view to determining whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer. The determination will be made in the light of considerations such as the following:

(1) The primary purpose of the company or person on and since the date it was established;

(2) The functional dominance or subservience of its carrier business in relation to its non-carrier business;

(3) The amount of its carrier business and the ratio of such business to its entire business;

(4) Whether its carrier business is a separate and distinct enterprise.

(b) In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer.

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§ 202.4 Control.

A company or person is controlled by one or more carriers, whenever there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.

§ 202.5 Company or person under common control.

A company or person is under common control with a carrier, whenever the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

§ 202.6 Casual service and the casual operation of equipment or facilities.

The service rendered or the operation of equipment or facilities by a controlled company or person in connection with the transportation of passengers or property by railroad is "casual" whenever such service or operation is so irregular or infrequent as to afford no substantial basis for an inference that such service or operation will be repeated, or whenever such service or operation is insubstantial.

§ 202.7 Service or operation in connection with railroad transportation.

The service rendered or the operation of equipment or facilities by persons or companies owned or controlled by or under common control with a carrier is in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

§ 202.8 Controlled company or person principally engaged in service or operation in connection with railroad transportation.

Any company or person owned or controlled by one or more carriers or under common control therewith, whose principal business is the operation of equipment or facilities or the performance of service (other than trucking service) in connection with the transportation of passengers or property by railroad, shall be an employer.

§ 202.9 Controlled company or person not principally engaged in service or operation in connection with railroad transportation.

(a) With respect to any company or person owned or controlled by one or more carriers or under common control therewith, performing a service or operating equipment in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, but which is principally engaged in some other business, the Board will require the submission of information pertaining to the history and all operations of such company or person with a view to determining whether it is an employer or whether some identifiable and separable enterprise conducted by the person or company is to be considered to be the employer, and will make a determination in the light of considerations such as the following:

(1) The primary purpose of the company or person on and since the date it was established;

(2) The functional dominance or subservience of its business which constitutes a service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad in relation to its other business;

(3) The amount of its business which constitutes a service or operation of equipment or facilities in connection with the transportation of passengers or property by railroad and the ratio of such business to its entire business;

(4) Whether such service or operation is a separate and distinct enterprise;

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(5) Whether such service or operation is more than casual, as that term is defined in §202.6.

(b) In the event that the employer is found to be an aggregate of persons or legal entities or less than the whole of a legal entity or a person operating in only one of several capacities, then the unit or units competent to assume legal obligations shall be responsible for the discharge of the duties of the employer.

§ 202.10 Commencement of employer status of receiver or trustee, etc.

A receiver, trustee, or other individual or body, judicial or otherwise, in the possession of the property or operating all or any part of the business of a carrier, or of a company or person owned or controlled by or under common control with such a carrier, which operates any equipment or facility or performs any service in connection with the transportation of passengers or property by railroad, shall be deemed to be an employer beginning as of whichever of the following three dates is the earliest:

(a) The date that it takes possession of such property; or

(b) The first date on which it has authority to operate all or any part of the business of such a carrier, company or person; or

(c) The date that it begins operating without appointment or authorization all or any part of the business of such a carrier, company or person;

Provided, however, That the receiver, trustee, or other individual or body, judicial or otherwise, shall be an employer only with respect to such individuals as would be employees if the preceding employer had continued in the possession of the property or the operation of the business.

§ 202.11 Termination of employer status.

The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

[Board Order 41-85, 6 FR 1210, Mar. 1, 1941]

§ 202.12 Evidence of termination of employer status.

(a) In determining whether a cessation of an essential characteristic, such as control or service in connection with railroad transportation, has occurred, consideration will be given only to those events or actions which evidence a final or complete cessation. Mere temporary periods of inactivity or failure to exercise functions or to operate equipment or facilities will not necessarily result in a loss of employer status.

(b) The actual date of cessation of employer status shall be the date upon which final or complete cessation of an essential employer characteristic occurs. The following indicate but do not delimit the type of evidence that will be considered in determining the actual date of cessation of an employer status: stoppage of business or operations; the cancellation of tariffs, concurrences, or powers of attorney filed with the Interstate Commerce Commission; the effective date of a certificate permitting abandonment; the effective date of a pertinent judicial action such as the discharge of a receiver, trustee, or other judicial officer, or an order approving sale of equipment or machinery; the sale, transfer, or lease of property, equipment, or machinery essential to the continuance of an employer function or to control by a carrier employer; public or private notices of contemplated or scheduled abandonment or cessation of operations; termination of contract; discharge of last employee; date upon which the right of a railway labor organization to participate in the selection of labor members of the National Railroad Adjustment Board ceases or is denied; and date on which an employer, if a labor organization, ceases to represent or is denied the right to represent crafts or classes of employees in the railroad industry, or to promote the interests of employees in the railroad industry.

(c) In the absence of evidence to the contrary the employer status of an existing company or person shall be presumed to continue, and in accordance with §250.1(b) of this chapter it is the

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duty of each employer promptly to notify the Board of any change in operations affecting such company's status as an employer.

[Board Order 41-85, 6 FR 1210, Mar. 1, 1941]

§ 202.13 Electric railways.

(a) The Deputy General Counsel will require the submission of information pertaining to the history and operations of an electric railway with a view to determining whether it is an employer and will inquire into and make his recommendations upon the following considerations:

(1) Whether the electric railway is more than a street, suburban or inter-urban electric railway; or

(2) Whether it is operating as a part of a general steam-railroad system of transportation; or

(3) Whether it is part of the national transportation system.

(b) If in the opinion of the Deputy General Counsel an electric railway has the characteristic set forth in either paragraphs (a)(1), (2), or (a)(3) of this section, he will conclude that it is an employer under the act and if the operator concurs in such opinion, the decision will be made final by the Board. If the operator does not concur in the conclusion reached the question will be submitted to the Interstate Commerce Commission for determination.

(45 U.S.C. 231f(b)(5))

[4 FR 1478, Apr. 7, 1939, as amended at 48 FR 51448, Nov. 9, 1983]

§ 202.14 Service incidental to railroad transportation.

An organization, association, bureau or agency is performing a service in connection with or incidental to railroad transportation whenever it is engaged in the performance of functions which would normally be performed by the constituent employers in the absence of such organization, association, bureau, or agency.

§ 202.15 Railway labor organizations.

Railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and

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National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations, shall be employers within the meaning of the act.

(a) An organization doing business on or after June 21, 1934, which establishes, in accordance with paragraph (a)(1), (2), or (3) of this section a right, under section 3 "First" (a) of the Railway Labor Act, as amended (48 Stat. 1189; 45 U.S.C. 153 "First" (a)), to participate in the selection of labor members of the National Railroad Adjustment Board, will be presumed, in the absence of clear and convincing evidence to the contrary, to be, from and after the date on which such right is thus established, a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Such an organization can establish that it is an employer by establishing, in accordance with paragraph (b) of this section, that, as a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, it is a "railway" organization. An organization, doing business on or after June 21, 1934, which has not established such a right of participation, will be presumed not to be a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended, and such presumption can be rebutted only by clear and convincing evidence satisfactory to the Board showing that the reasons for the organization's failure to establish such a right have no relation to its being a labor organization, national in scope and organized in accordance with the provisions of the Railway Labor Act, as amended. Only after such presumption has thus been rebutted will further evidence as to whether the organization is an employer be considered. (The establishment or nonestablishment of such a right of participation will not raise any presumption as to whether an organization is, or is not, a "railway" organization. The existence of this qualification shall be determined in accordance with paragraph (b) of this section.) An

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organization will have established such a right of participation if:

(1) It has in fact participated in the selection of labor members of the National Railroad Adjustment Board and has continued to participate in such selection; or

(2) It has been found, under section 3 “First” (f) of the Railway Labor Act, as amended (48 Stat. 1190; 45 U.S.C. 153 “First” (f)), to be qualified to participate in the selection of labor members of the National Railroad Adjustment Board; or

(3) It is recognized by all organizations, qualified under paragraphs (a)(1) or (2) of this section, as having the right to participate in the selection of labor members of the National Railroad Adjustment Board.

(b) The question as to whether a labor organization, national in scope, and organized in accordance with the provisions of the Railway Labor Act, as amended, is, as such a national labor organization, a “railway” labor organization, will be determined by the Board on the basis of considerations such as the following:

(1) The extent to which it is, and has been recognized as, representative of crafts or classes of employees in the railroad industry.

(2) The extent to which its purposes and business are and have been to promote the interests of employees in the railroad industry.

(c) A labor organization which ceased doing business before June 21, 1934, will have been an employer if its characteristics were substantially the same as those of labor organizations, doing business on or after June 21, 1934, which are established as employers in accordance with paragraphs (a) and (b) of this section.

(d) An organization which establishes, to the satisfaction of the Board, that it is a labor organization, as defined in paragraph (e) of this section, and that is composed of labor organizations which are established as employers in accordance with paragraphs (a), (b), and (c) of this section, is thereby established as being an employer.

(e) For the purposes of the regulations in this chapter, a labor organization is an organization whose business is to promote the interests of employ-

ees in their capacity as employees, either directly or through their organizations.

PART 203—EMPLOYEES UNDER THE ACT

Sec.

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AUTHORITY: Secs. 1, 10, 50 Stat. 307, as amended, 314 as amended; 45 U.S.C. 228a, 228j, unless otherwise noted.

SOURCE: 12 FR 1133, Feb. 19, 1947, unless otherwise noted.

§ 203.1 Statutory provisions.

The term “employee” means (1) any individual in the service of one or more employers for compensation, (2) any individual who is in the employment relation to one or more employers, and (3) an employee representative. The term “employee” shall include an employee of a local lodge or division defined as an employer in sub-section (a) only if he was in the service of or in the employment relation to a carrier on or after the enactment date. The term “employee representative” means any officer or official representative of a railway labor organization other than a labor organization included in the term “employer” as defined in section 1(a) who before or after the enactment date was in the service of an employer as defined in section 1(a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

The term “employee” shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal