

Buy-outs and Railroad Retirement benefits

(The U.S. Railroad Retirement Board issued the following on July 29, 2009.)

CHICAGO — Railroad employees frequently ask the Railroad Retirement Board how the acceptance of a buy-out from a railroad employer affects their future eligibility for benefits under the Railroad Retirement and Railroad Unemployment Insurance Acts. The following questions and answers provide information on this subject.

1. Would leaving railroad work and accepting a buy-out mean that an employee forfeits any future entitlement to an annuity under the Railroad Retirement Act?

As long as an employee has acquired at least 120 months (10 years) of creditable rail service or 60 months (5 years) of creditable service if such service was performed after 1995, he or she would still be eligible for a regular railroad retirement annuity upon reaching retirement age, or, if totally and permanently disabled, for an annuity before retirement age, regardless of whether or not a buy-out was ever accepted.

However, if a person permanently leaves railroad employment before attaining retirement age, the employee may not be able to meet the requirements for certain other benefits, particularly the current connection requirement for annuities based on occupational, rather than total, disability and for supplemental annuities paid by the Board to career employees.

In addition, if an employee does not have a current connection, the Social Security Administration, rather than the Railroad Retirement Board, would have jurisdiction of any survivor benefits that become payable on the basis of the employee's combined railroad retirement and social security covered earnings in the future. The survivor benefits payable by the Board are generally greater than those paid by the Social Security Administration.

2. How are buy-out payments treated under the Railroad Retirement and Railroad Unemployment Insurance Acts?

Payments that result from abolishment of an employee's job are creditable as compensation under the Railroad Retirement and Railroad Unemployment Insurance Acts. While the actual names of these employer payments may vary, the treatment given them by the Board will depend upon whether the employee relinquished or retained his or her job rights. If the employee relinquishes job rights to obtain the compensation, the Board considers the payment a separation allowance. While all compensation subject to tier I payroll taxes is considered in the computation of a railroad retirement annuity, no additional service months can be credited after the month in which rights are relinquished.

The Board considers the buy-out payment a dismissal allowance, even though the employer might designate the payment a separation allowance, if the employee retains job rights and receives monthly payments credited to the months for which they are allocated under the dismissal allowance agreement. This is true even if the employee relinquishes job rights after the end of the period for which a monthly dismissal allowance was paid. However, supplemental unemployment or sickness benefits paid under a Railroad Retirement Board-approved nongovernmental plan by a railroad or third party are not considered compensation for railroad retirement purposes.

3. Suppose an employee is given a choice between (1) accepting a separation allowance, relinquishing job rights and having the payment he or she receives credited to one month or (2) accepting a dismissal allowance, retaining job rights and having the payment credited to the months for which it is allocated. What are

some of the railroad retirement considerations the employee should keep in mind?

Individual factors such as an employee's age and service should be considered.

For example, if an employee is already eligible to begin receiving a railroad retirement annuity, he or she may find it advantageous to relinquish job rights, accept a separation allowance, and have the annuity begin on the earliest date allowed by law. Any periodic payments made after that date would not preclude payment of the annuity because the employee has relinquished job rights.

On the other hand, some younger employees may find it more advantageous to retain job rights and accept monthly compensation payments under a dismissal allowance if these payments would allow them to acquire 120 months of creditable rail service (or 60 months of creditable rail service if such service was performed after 1995) and establish future eligibility for a railroad retirement annuity. Also, additional service months might allow a long-service employee to acquire 30 years of service, which is required for early retirement at age 60, or 25 years of rail service, which is required for supplemental annuities paid by the Board. Establishing 25 years of service could also aid an employee in maintaining a current connection under the Railroad Retirement Act.

4. How would acquiring 25 years of railroad service assist an employee in maintaining a current connection?

The current connection requirement is normally met if the employee has railroad service in at least 12 of the last 30 consecutive months before retirement or death. If an employee does not qualify on this basis but has 12 months of service in an earlier 30-month period, he or she may still meet the requirement if the employee does not work outside the railroad industry in the interval following the 30-month period and the employee's retirement, or death if that occurs earlier. Nonrailroad employment in that interval will likely break the employee's current connection.

However, since 1981, a current connection can be maintained for purposes of supplemental and survivor annuities, but not occupational disability annuities, if the employee completed 25 years of railroad service, was involuntarily terminated without fault from the railroad industry, and did not thereafter decline an offer to return to work in the same class or craft as his or her most recent railroad service, regardless of the location of the work offered. If all of these requirements are met, an employee's current connection may not be broken, even if the employee works in regular nonrailroad employment after the 30-month period and before retirement or death.

5. Would the acceptance of a buy-out have any effect on determining whether an employee could maintain a current connection under the exception provision?

In cases where an employee has no option to remain in the service of his or her employer, the termination of the employment is considered involuntary, regardless of whether the employee does or does not receive a buy-out.

However, an employee who chooses a buy-out instead of keeping his or her seniority rights to railroad employment would, for railroad retirement purposes, generally be considered to have voluntarily terminated railroad service, and consequently would not maintain a current connection under the exception provision.

6. An employee with 25 years of service is offered a buy-out with the option of

either taking payment in a single lump sum or of receiving monthly payments until retirement age. Could the method of payment affect the employee's current connection under the exception provision?

If the employee had the choice to remain in employer service and voluntarily relinquished job rights prior to accepting the payments, his or her current connection would not be maintained under the exception provision, regardless of which payment option is chosen. Therefore, nonrailroad work after the 30-month period and before retirement, or the employee's death if earlier, could break the employee's current connection. Such an employee could only meet the current connection requirement under the normal procedures.

7. Is it always advantageous to maintain a current connection?

While a current connection is generally advantageous for railroad retirement purposes, the costs of maintaining a current connection could outweigh its value, depending on individual circumstances. There may be other financial or personal factors involved besides railroad retirement eligibility and/or the preservation of a current connection, and these will vary from individual to individual.

8. Are separation and dismissal allowances subject to railroad retirement payroll taxes?

Under the Railroad Retirement Tax Act, which is administered by the Internal Revenue Service, payments of compensation, including most buy-outs, are subject to tier I and tier II taxes on earnings up to the annual maximum earnings bases in effect when the compensation is paid. This is true whether payment is made in a lump sum or on a periodic basis.

To the extent that a separation allowance does not yield additional tier II railroad retirement service credits, a lump sum, approximating part or all of the railroad retirement tier II payroll taxes deducted from the separation allowance, will be paid upon retirement to employees meeting minimum service requirements or their survivors. This lump sum applies to separation allowances made after 1984.

If an employee receives a dismissal allowance, he or she receives service credits for the tier II taxes deducted from the dismissal allowance payments. Consequently, such a lump sum would not be payable.

If an employee has an option about how a buy-out is to be distributed, he or she should consider the impact of both payroll taxes and income tax on the payments. Employees with questions in this regard should contact the payroll department of their railroad employer and/or the Internal Revenue Service.

9. Would an employee be able to receive unemployment or sickness benefits paid by the Railroad Retirement Board after accepting a separation allowance?

An employee who accepts a separation allowance cannot receive unemployment or sickness benefits for roughly the period of time it would have taken to earn the amount of the allowance at his or her straight-time rate of pay. This is true regardless of whether the allowance is paid in a lump sum or installments. For example, if an employee's salary was \$3,000 a month without overtime pay and the allowance was \$12,000, he or she would be disqualified from receiving benefits for approximately four months.

10. Can an employee receive unemployment benefits after his or her separation allowance disqualification period has ended?

An employee who has not obtained new employment by the end of the disqualification period and is still actively seeking work may be eligible for unemployment benefits at that time. The employee must meet all the usual eligibility requirements, including the availability for work requirement. An employee can establish his or her availability for work by demonstrating a willingness to work and making significant efforts to obtain work. In judging the employee's willingness to work, the Board considers, among other factors, the reason the employee accepted the separation allowance and the extent of his or her work-seeking efforts during the disqualification period.

11. How would the acceptance of a dismissal allowance affect an employee's eligibility for unemployment and sickness benefits?

Payments made under a dismissal allowance would be considered remuneration under the Railroad Unemployment Insurance Act and the employee would not be eligible for unemployment or sickness benefits during the period the dismissal allowance is being paid. The employee may, of course, be eligible for benefits after the end of this period if he or she is still actively seeking work or is unable to work because of illness or injury.

12. Where can employees get more specific information on how benefits payable by the Board are affected by a buy-out?

Employees can contact an office of the Railroad Retirement Board by calling toll free at 1-877-772-5772 for information as to how a buy-out they have been offered could affect their eligibility for benefits. However, Board personnel are not equipped to advise on other financial or personal factors, which may also bear consideration. Most offices are open to the public from 9:00 a.m. to 3:30p.m., Monday through Friday, except on Federal holidays. Employees can also send their questions to a Railroad Retirement Board office via secure e-mail through the agency's Web site, www.rrb.gov.