

Separation and Dismissal Allowances Under the Railroad Retirement and Railroad Unemployment Insurance Acts



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UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD

Form IB-6
(06-09)

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INTRODUCTION

Railroad employees frequently ask the Railroad Retirement Board (RRB) how accepting a separation allowance or dismissal allowance from an employer affects their future eligibility for benefits under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA). The following questions and answers provide information on this subject.

1. What is the difference between a separation allowance and a dismissal allowance?

A **separation allowance** is a payment made by an employer, to an employee, in exchange for the employee's agreement to sever the employment relationship that exists between them.

- The employee relinquishes all job rights as of the date stated in the separation allowance agreement.
- The separation allowance payment may be made in one lump-sum amount or in installments. The effective date of the separation does not change if an installment plan is used.

A **dismissal allowance** is a series of monthly payments made by an employer to an employee who will retain employment rights for an agreed-upon period of time. The following may apply to the payments and agreement.

- The employee will be terminated from employment with the employer at the end of the agreed-upon period.
- The employee may be recalled to work during the agreed-upon period.
- The employee may receive employee benefits during the agreed-upon period.

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

Both separation and dismissal allowances are subject to railroad retirement Tier I and Tier II withholdings based on the tax rates and earnings bases in effect during the year paid (this is true of separation allowances whether they are paid in a lump sum or installments). Both allowances are also subject to Medicare and Federal income taxes.

3. Does an employee receive service months for a separation or dismissal allowance?

No service months are credited for a separation allowance beyond the point of separation. An employee will be credited with a service month for each monthly dismissal allowance payment. Such service months will be used as any other reported month in RRA and RUIA benefit processes.

If an employee has fewer than 12 reported service months for a given year, additional months may be credited or deemed if the total reported Tier II compensation amount for the year exceeds 1/12 of the annual Tier II earnings base times the number of reported months. Deemed service months will also be used like any other reported month. (No months may be deemed for periods after the annuity beginning date or the date of separation.)

4. Would an employee be able to receive unemployment or sickness benefits under the RUIA after receiving a separation or dismissal allowance?

A separation allowance causes an employee to be disqualified for RUIA benefits for a period of time. This "disqualification period" is approximately equal to the amount of time it would have taken the employee to

earn the total amount of the separation allowance at the employee's straight time rate of pay.

For example, an employee who earns \$5,000 a month without overtime pay and receives a separation allowance of \$20,000 would be disqualified from receiving sickness or unemployment benefits for approximately four months.

Dismissal allowance payments are considered to be remuneration under the RUIA. This means that no sickness or unemployment benefits may be received for the period for which dismissal allowance payments are received.

5. Can an employee receive RUIA benefits after a dismissal allowance or a disqualification period ends?

An employee may be eligible for unemployment benefits at the end of a dismissal allowance or disqualification period if the employee is seeking work. If the employee is unable to work due to sickness or injury, sickness benefits may be payable. The employee would also need to have qualifying base year earnings. Separation allowance installment payments are not included in base year earnings.

Information about RUIA eligibility is available in the RRB Booklets UB-10 *Unemployment Benefits for Railroad Employees* and UB-11 *Sickness Benefits for Railroad Employees*.

6. How would a separation or dismissal allowance affect entitlement to an employee, spouse, or divorced spouse retirement annuity under the RRA?

A separation or dismissal allowance would not affect the entitlement to an employee, spouse, or divorced spouse retirement annuity under the RRA. Refer to Form G-177 for the conditions of entitlement to an employee annuity, Form G-177A for the conditions of entitlement to a spouse annuity, and Form G-177C for the conditions of entitlement to a divorced spouse annuity.

However, an employee who leaves the rail industry before reaching retirement age may not be eligible for an annuity based on an *occupational disability* or a supplemental annuity because the employee may not have a **current connection** with the rail industry.

The term current connection means that, at the time of retirement or death, a person is considered to be a career rail industry employee. More information is available on maintaining a current connection in the RRB Booklet IB-2 *Railroad Retirement and Survivor Benefits*.

An employee with at least 25 years of service may not receive a supplemental annuity unless a current connection with the rail industry is maintained. An employee with 25 years of service may qualify for a **deemed current connection** as explained in Item 9. A deemed current connection would preserve an employee's right to a supplemental annuity. It would not preserve the right to an annuity based on occupational disability.

7. How would the type of allowance selected affect the date that an employee annuity can begin?

Selecting a separation allowance, instead of a dismissal allowance, would allow an employee annuity to begin at an earlier date, provided all other eligibility requirements are met.

- An annuity cannot begin until the period for which the dismissal allowance is paid ends.
- A separation allowance does not affect the annuity beginning date, even if it is paid in installments. An annuity can begin as early as the day after the employee last worked for the railroad.

8. How would the separation allowance or dismissal allowance affect entitlement to a survivor annuity under the RRA?

An employee's survivors may not be entitled to receive an annuity from the RRB if the employee did not meet current connection requirements at the time of death. However, if the employee had at least 25 years of railroad service, survivors may qualify based on a deemed current connection (as explained in Item 9) provided all other requirements are met.

9. What is a deemed current connection and how would it help an employee?

Legislation in 1981 established a deemed current connection for employees who leave railroad service involuntarily before attaining retirement age. The deemed current connection would preserve an employee's rights to a supplemental annuity and survivor benefits regardless of any non-railroad earnings the employee may have after leaving railroad service.

To qualify for a deemed current connection, an employee must:

- have at least 25 years of railroad service; and,
- have either stopped working in the railroad industry involuntarily and without fault for a non-medical reason; or have been on furlough, leave of absence, or absent because of injury and have not been called back to work; and,
- have not declined a bona fide offer to remain in, or return to, railroad employment in the same class or craft as the employee's most recent railroad service (regardless of the number of miles the employee would have to move to accept such a job).

Proof of employment status can be personnel records, pay records, or pay stubs that indicate that an employee was on furlough, leave of absence, or absent because of injury. Health insurance records and affidavits from union officials, railroad officials, or co-workers can also be used. The social security number of each co-worker should be given so the RRB can verify that each was a railroad employee.

10. Would the acceptance of a separation or dismissal allowance have any effect on determining whether an employee has a deemed current connection?

An employee must involuntarily leave railroad service to qualify for a deemed current connection. If the employee has no option to remain in railroad service, the acceptance of a separation or dismissal allowance will not have an effect on the deemed current connection. For example, if the employee's job will be abolished

whether or not a separation allowance is accepted, the employee is considered to have left the railroad industry involuntarily.

However, an employee who chooses either a separation or dismissal allowance, instead of retaining a railroad job or accepting a job offer in the same class or craft, is considered to have left the railroad industry voluntarily and would not qualify for a deemed current connection.

11. What is a Separation Allowance Lump-Sum Amount (SALSA) Payment?

Special SALSA payments are payable to retired employees when railroad retirement Tier II taxes were withheld from a separation allowance payment, and the separation allowance did not yield additional Tier II railroad service and compensation credits in their retirement annuity. To be eligible for a SALSA payment, an employee must have at least 120 creditable service months or at least 60 months of creditable service months after 1995. If the employee died prior to retirement, the SALSA payments are payable to eligible survivors of the employee.

The following example illustrates the implications of a separation allowance. An employee with 120 months of railroad service agrees, in January 2008, to relinquish seniority rights to receive a separation allowance of \$20,000, thereby severing the employment relation. The \$20,000 separation allowance was the only creditable railroad service the employee earned in 2008. The employee paid railroad retirement taxes on the \$20,000. Under the RRA the full \$20,000 was used for Tier I benefit purposes.

However, only one month's compensation of \$6,325 (1/12 of the 2008 annual Tier II earnings base of \$75,900) was used for Tier II benefit purposes. This is because the RRA does not permit the use of Tier II compensation after the employment relation ends.

Upon awarding the employee a railroad retirement annuity, the RRB paid the employee a SALSA payment of \$533.33. This amount represents the Tier II taxes the employee paid on the portion of the separation allowance that could not be used for Tier II benefit purposes (\$6,325 times 3.9%).

Employees who receive dismissal allowances earn railroad service months and compensation credits from the payments received under the agreement. All reported service months and compensation is used for benefit purposes. Therefore, no SALSA amount is payable to employees based on dismissal allowances.

12. How does an employee know which type of allowance is being offered?

It is not always obvious whether an agreement is a separation or dismissal allowance because the word "separation" is often used in both agreements. However, one key factor is whether an employment relationship is maintained throughout the period of payments. Service months are not creditable after the employee relinquishes employment rights. If service months are to be reported to the RRB, the agreement is most likely a dismissal allowance. Information about your specific agreement can be obtained by providing your local RRB office with a copy of the complete agreement.

13. Where can I get more information on how a separation or dismissal allowance affects benefits?

Your local RRB office can assist you in determining how a separation or dismissal allowance will affect benefits. RRB personnel can also provide an estimate of your railroad retirement annuity. If you write or send documents to the RRB, always include your:

- RRB claim number,
- name, and
- daytime telephone number.

Most RRB offices are open to the public from 9:00 a.m. until 3:30 p.m., Monday through Friday. To locate the nearest RRB office, visit our Web site at www.rrb.gov or call 877-772-5772.

You may also call to obtain a statement showing your months of railroad service and the amount of compensation credited to you under the Railroad Retirement Act.

NONDISCRIMINATION ON THE BASIS OF DISABILITY

Under Section 504 of the Rehabilitation Act of 1973 and Railroad Retirement Board (RRB) regulations, no qualified person may be discriminated against on the basis of disability. RRB programs and activities must be accessible to all qualified applicants and beneficiaries, including those who are vision or hearing-impaired. Disabled persons needing assistance (including auxiliary aids or program information in accessible formats) should contact the nearest RRB office. Complaints of alleged discrimination by the RRB on the basis of disability must be filed within 90 days in writing with the Director of Administration, Railroad Retirement Board, 844 North Rush Street, Chicago Illinois 60611-2092. Questions about individual right under this regulation may be directed to the RRB's Director of Equal Opportunity at the same address shown above.

FRAUD AND ABUSE HOT LINE

Call the toll-free Fraud and Abuse Hot Line if you have reason to believe that someone is receiving railroad retirement or unemployment-sickness benefits to which (s)he is not entitled; that persons responsible for the financial affairs of minors or incompetent beneficiaries are misappropriating benefits; or that a doctor, hospital, or other provider of health care services is performing unnecessary or inappropriate services or is billing Medicare for services not received. You may also use the Hot Line to report any suspected misconduct by a Railroad Retirement Board (RRB) employee. The Hot Line has been installed by the RRB's Inspector general to receive any evidence of fraud or abuse of the RRB's benefit programs.

Call (toll-free) 1-800-772-4258. Or you may send your complaints in writing to the RRB, OIG, Hot Line Officer, 844 North Rush Street, Chicago, Illinois 60611-2092.

Please do not call the Inspector General's Hot Line with questions about eligibility requirements, delayed claims, or similar problems. Such matters should be directed to the nearest RRB field office.