

May 8, 1997
L-97-22

TO : Ronald J. Dammon
Director of Field Service

FROM : Catherine C. Cook
General Counsel

SUBJECT : Deemed Current Connection
A. M. R., Jr.

This is in reply to your memorandum of April 25, 1997, regarding whether A. M. R., Jr., will qualify for a deemed current connection if he accepts a separation allowance from his employer, the Southern Pacific Transportation Company.

Mr. R. has at least 25 years of railroad service and is currently a member of the Association of Railroad Technical Employees as an assistant engineer, job classification 201. He has been offered employment as a project analysis clerk, job classification 212 or 215, which would require membership in the Transportation Communication Union.

Section 216.15(b) of the Board's regulations provides that an employee has a deemed current connection if he or she meets the following requirements:

- (1) Has been credited with at least 25 years of railroad service;
- (2) Stopped working in the railroad industry "involuntarily and without fault" * * *;
- (3) Did not decline an offer of employment in the same "class or craft" as his or her most recent railroad service; and
- (4) Was alive on October 1, 1981.

Under section 216.15(c) of the Board's regulations, an employee is considered to have stopped railroad employment involuntarily and without fault if:

- (1) The employee loses his or her job;
- (2) The employee could not, through the exercise of seniority rights, remain in railroad service in the same class or craft as his or her most recent railroad service, regardless of the location where that service would be performed * * *.

The regulation defines "Class or craft" to have the same meaning as they do generally in the railroad industry. [20 CFR 216.15(e)].

Based on the information provided, I would conclude that the offer of employment received by Mr. R. is not in the same class or craft as that of his current employment. However, the information provided is insufficient to make a determination as to whether or not Mr. R. has any other alternative to remain in railroad employment in the same class or craft as his most recent railroad service. For example, it is not clear why the jobs in a different class are being offered to him. In addition, Mr. R. did not submit information regarding the terms of the separation allowance. If there are circumstances which would enable Mr. R. to retain a position similar to his current position, he would not have a deemed current connection. Also, a final decision regarding the existence of a current connection cannot be made until the employee retires or dies, since he could, subsequent to a decision made prior to retirement on death, "decline an offer of employment in the same 'class or craft' * * *" and consequently not qualify for a deemed current connection.