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## Railroad Occupational Disability: Conflict Over Standards

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### Summary

A labor-management agreement ended rail labor's call for an industry-wide strike as well as management's efforts in federal court to delay the potential strike date. At issue are standards for adjudicating applications for benefits from workers claiming to be unable to work their jobs because of disabilities. The agreement, ratified by the 3-member Railroad Retirement Board on January 30, 1997, commits the industry labor-management factions to continue with the effort to establish "appropriate standards," with action to adopt standards delayed until Board members meet in July.

**Introduction.** Many Member offices have been contacted by constituents concerned about efforts to establish new standards by which staff of the Railroad Retirement Board (RRB)<sup>1</sup> would adjudicate occupational disability claims. Such claims can be advanced by eligible workers who believe they are unable to perform their railroad jobs because of a disability. Occupational disabilities are not sustained on the job, but do limit the capacity to perform the job. Occupational is also distinguished from total disability; the former is tied to requirements of specific jobs while the latter generally applies to all jobs. Occupational disability payments are a part of the rail industry pension system; total disability payments are paid through the Social Security/Railroad Retirement social insurance structure (Tier I).

**Origin of the Railroad Occupational Disability Program.** The 1946 legislation that added occupational disability benefits to the federally-administered railroad benefit package called for the establishment and application of uniform occupational disability standards. Although none were adopted, the Act instructed the Board to develop standards "with the cooperation of employers and employees." RRB actions are specified

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<sup>1</sup> The Railroad Retirement Board refers both to the agency that administers federal benefits for railroad employees and to the three member panel officially charged with administering the RRB.



by federal law, but Congress generally enacts such laws only after labor/management representatives have reached agreement about the objectives of the legislation.

In the absence of final standards, the RRB has been using provisional ones based on existing practices for determining when an employee could not continue working in the same occupation, generally defined as the particular craft or service within which the applicant is employed. In other words, a railway clerk who could not perform a clerk's functions would be occupationally disabled, regardless of whether the employee could perform routine track maintenance, and vice versa.

**The Effort to Establish Standards.** In 1988, Board staff produced adjudication standards for consideration by the three member Board. The labor member of the Board approved the standards, but the management member did not. In 1995, the management member submitted standards proposed by the Association of American Railroads, the principal organization representing the interests of railroad companies (called "carriers" in rail industry publications). These were opposed by the labor member of the Board. Subsequently, a task force comprised of representatives of rail management and labor, together with employees of the RRB proposed testing of the two sets of standards by Board technical staff, using cases previously approved under the provisional standards in place since 1946. Testing was to be completed by September 1, 1996, and made available to members of the task force for review and comment.

**Recent Action.** With testing not completed by the time of the monthly Board meeting in November, the management member (Jerome Kever) and the public member (Glenn Bower) voted to release preliminary test results (not yet made public) to the task force on December 6, 1996, with comments due the Board by December 12, and voting scheduled for the December, 1996 Board meeting. On December 18, 1996 Kever and Bower voted to adopt the proposal over the objections of the labor member (V. M. Speakman, Jr.) that the vote was illegal if the task force had not completed its work. The three part proposal instructed the RRB to immediately cease use of the provisional occupational disability standards, to begin the process for turning the proposed standards into federal rules, and to train Board staff to use elements of the new process that could be put in place administratively.

All railroad unions but one endorsed a strike if management did not halt the preemption of the task force process; management filed suit in federal court to restrain the strike, initially scheduled for January 22, 1997. However, railroad labor and management representatives began discussing alternatives, and the strike was averted when agreement was reached on January 24. With the public member casting a neutral vote on January 30, the agreement was ratified and the crisis receded. The three part agreement calls for a return to the use of the provisional standards, a task force effort to reach agreement on new standards, and a delay of any further action until the July, 1997 Board meeting.

**Eligibility Requirements.** To be eligible for railroad employee occupational disability benefits, a worker has to be aged 60 with at least 10 years of railroad service, or at any age with at least 20 years of service, and adjudged to be permanently disabled for the applicant's occupation. According to the management member, about 16,000 individuals under age 65 are drawing about \$270 million a year in total benefits, and about 97% of occupational disability claims are approved.