NATIONAL TRANSPORT

BRITISH TRANSPORT COMMISSION

The Controlled Bodies (Compensation to Employees) Regulations, 1950

1950 No. 1246

Made - - - - 25*th July*, 1950*
Coming into Operation 8*th August*, 1950

The Minister of Transport, in exercise of the powers conferred upon him by Section 101 of the Transport Act, 1947(a), and of all other powers him enabling, hereby makes the following Regulations :—

1.—(1) These Regulations shall come into operation on the fourteenth day after the date upon which these Regulations are made, and shall have effect from the 31st day of December, 1947.

(2) These Regulations may be cited as "The Controlled Bodies (Compensation to Employees) Regulations, 1950".

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

"the Act" means the Transport Act, 1947:

"the Commission" means the British Transport Commission:

"completed year of whole time service" means service for a period of three hundred and sixty-five days, or a number of periods amounting in the aggregate to three hundred and sixty-five days:

Provided that if the period or periods of whole time service when aggregated include a fraction of a year, that fraction shall, if it exceeds one hundred and eighty-two days, be treated as a year, and in any other case be disregarded:

"controlled body" means a body which, immediately before the date of the relevant event was completely controlled by one or more of the bodies specified in the Third Schedule to the Act:

"Current net emoluments", in relation to an existing officer or servant suffering loss of employment or loss or diminution of emoluments or worsening of conditions, means his annual rate of emoluments at the date of such loss, diminution or worsening, after deducting therefrom any contribution payable by the officer or servant under any pension scheme associated with his employment; furthermore, any amount by which emoluments exceed £4,000 shall be disregarded:

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* These Regulations were approved in draft in accordance with subsection (4) of section 101 of the Transport Act, 1947, by the House of Commons on the 19th July, 1950, and by the House of Lords on the 24th July, 1950.

(a) 10 & 11 Geo. 6. c. 49.

"emoluments" means any of the following payments or other benefits made to or enjoyed by an officer or servant in respect of services rendered by him as such:—

(*a*) all salary, wages, fees (excluding fees paid to a director otherwise than in respect of services rendered as a managing director or in discharge of functions substantially those of an employee) and other payments of a similar nature for his own use;

(*b*) all bonuses, allowances, commission, gratuities, special duty and overtime pay that are of a recurrent nature, whether seasonal or otherwise and whether obtaining legally or by customary practice; and

(*c*) the money value of all travel privileges, free accommodation and any other allowances in kind, privileges, or benefits, whether obtaining legally or by customary practice;

but does not include payments for travelling, subsistence, accommodation, engagement of assistanoe and other expenses incurred in the course of employment, overtime and other payments that do not reflect a permanent state of affairs;

"an Executive" means an Executive established by or under Section 5 of the Act:

"existing officer or servant" means a person who was immediately before the date of the relevant event employed as an officer or servant by a controlled body and who had been continuously engaged (exclusive of any breaks not exceeding in the aggregate eighteen months) in whole time service since the 1st January, 1940:

Provided that a person, who immediately before the date of the relevant event was not so employed but was then on war service following immediately upon such employment, shall be treated as if immediately before the said date he had been employed as such an officer or servant;

"the Minister" means the Minister of Transport:

"normal maximum retiring age" means 65 years for males and 60 years for females:

"officer or servant" means a person—

(*a*) employed as an officer or servant by a controlled body; or

(*b*) employed as a member of the Commission or of an Executive or as an officer or servant by the Commission (whether or not the employment is by virtue of the Act to be treated as employment by an Executive) who became so employed immediately upon ceasing to be employed as an officer or servant by a controlled body;

"pensionable officer or servant" means an officer or servant who has pension rights:

"relevant event" means the transfer effected by Part II of the Act:

"tribunal" means a referee or board of referees appointed by the Minister of Labour and National Service after consultation with the Lord Chancellor or, where the proceedings are to be held in Scotland, after consultation with the Secretary of State:

"war service" means—

(i) service in any of His Majesty's forces;

(ii) any employment in the merchant navy or fishing fleets;

(iii) any full-time employment in the Civil Defence Services (including the National Fire Service), the Royal Observer Corps, the Police War Reserve, the Nursing and First Aid Services, and the Women's Land Army;

(iv) any full-time employment into which the officer or servant entered by direction of the Minister of Labour and National Service;

(v) detention by the enemy as a prisoner, military or civil, in any enemy or enemy-occupied country, or internment in any enemy or enemy-occupied or neutral country in consequence of the war;

(vi) such other employment as the Minister may in writing approve;

such service, employment, detention or internment being on or after the twenty-sixth day of May, 1939, or during the war of 1914 to 1918, but not including any voluntary enlistment after the cessation of hostilities or voluntary extension of war service otherwise than with the consent of the body in whose service the officer or servant was or would, but for his war service, have been at the time of the consent:

"whole time service" means employment after attaining the age of eighteen years—

(i) as an officer or servant;

(ii) where an undertaking has become, as the result of an acquisition or merger, part of the undertaking of a controlled body, by the persons carrying on that undertaking, and in the case of previous acquisitions or mergers of undertakings, which are indirectly represented by the undertaking of a controlled body, by the persons carrying on the undertakings so acquired or merged;

(iii) on any detached service which in accordance with the customary practice of the persons by whom he was employed as aforesaid, would, or which it was expressly agreed at the time should, be reckoned as service with those persons;

(iv) on war service following immediately upon any of the preceding employments;

(v) on such other service as the Minister may in the case of any named employee in writing approve;

to which the employee is required to devote on the average not less than 30 hours per week during which he is not at liberty to undertake other work in consideration of a fee or other remuneration; and includes any other employment which is "whole time service" for the purposes of the Transferred Undertakings (Compensation to Employees) Regulations, 1948(a), or the Transferred Undertakings (Compensation to Employees) Regulations, 1950(b).

(4) The Interpretation Act, 1889(c), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2.—(1) Without prejudice to any other requirement in these Regulations, nothing in these Regulations shall entitle a person to compensation unless

(i) he is an existing officer or servant; and

(a) S.I. 1948 (No. 1700) I, p. 3140. (b) S.I. 1950 No. 1083, p. 66 below.
(c) 52 & 53 Vict. c. 63.

(ii) the cause of the claim to compensation arises not later than ten years after the relevant event, and the claim is made, in the manner set out in the First Schedule to these Regulations, not later than two years after the date on which the cause of claim arises, or where the claimant could not reasonably have known that a cause of claim had arisen at the date when it in fact arose not later than two years after the first date upon which he could reasonably have known that a cause of claim had arisen; and

(iii) in consequence of the relevant event one or more of the following conditions are satisfied in relation to such persons, that is to say—

(*a*) his office or situation is abolished and he is not offered by the Commission or a controlled body a reasonably comparable office or situation; or

(*b*) his services are dispensed with on the ground that they are not required or for any reason other than reaching normal maximum retiring age, misconduct or incapacity to perform such duties as immediately before the relevant event he was performing or might reasonably have been required to perform; or

(*c*) his emoluments are reduced; or

(*d*) he otherwise suffers any direct pecuniary loss (including any loss of pension rights); or

(*e*) he is without his consent in a worse position with respect to the conditions of his service as a whole (including tenure of office, emoluments, sick fund or sick pay, and pension rights) as compared with the conditions of service formerly obtaining in respect of him:

Provided that the duties which a person is required to perform shall not, for the purposes of this paragraph, be deemed to be not reasonably comparable to those which (apart from any war service) he last performed before the relevant event by reason only that they are duties in connection with activities which did not form part of the activities of the controlled body by whom he was employed before the relevant event or that they involve a transfer of his employment from one place to another place within Great Britain.

(2) No compensation shall be payable in respect of

(i) any increase in emoluments or pension rights given, in connection with any provision made by the Act or in anticipation of the making of any such provision, otherwise than in the ordinary course; or

(ii) any pecuniary loss incurred by reason only of the issue of British Transport Stock in replacement of existing securities or assets.

3.—(1) Every existing officer or servant who, in consequence of the relevant event, suffers any direct pecuniary loss by reason of the abolition of his office or situation, the dispensing by the Commission or the controlled body with his services, or the loss or diminution of his emoluments or pension rights or otherwise, shall, subject to his complying with the procedure and conditions set out in the First Schedule to these Regulations, be entitled to receive in respect of that loss compensation to be determined in accordance with the provisions of the Second Schedule to these Regulations.

(2) Every existing officer or servant who, in consequence of the relevant event, suffers any loss or injury, not being a direct pecuniary loss in respect of which he is entitled to compensation under paragraph (1) of this Regulation, by reason of his position being without his consent worsened shall,

subject to his complying with the procedure and conditions set out in the First Schedule to these Regulations, be entitled to receive in respect of that loss or injury compensation calculated in the following manner, that is to say—

(i) the pecuniary value of the loss or injury shall be expressed in terms of current net emoluments; and

(ii) the appropriate compensation shall be determined accordingly in accordance with the provisions of the Second Schedule to these Regulations.

(3) If an existing officer or servant who has duly claimed compensation in respect of any loss or injury under the provisions of paragraphs (1) or (2) of this Regulation is aggrieved by the failure of the Commission to inform him of their decision upon his claim within the prescribed time, or by their refusal to grant compensation, or by the amount of compensation granted, he may, in accordance with the procedure set out in the First Schedule to these Regulations, require the matter to be referred forthwith to a tribunal, and the tribunal shall consider the case in accordance with the Second Schedule to these Regulations and determine whether any, and if so what, compensation ought to be granted to the claimant, and the Commission shall give effect to the decision of the tribunal.

4.—(1) Any compensation payable under these Regulations shall be paid by the Commission, subject to the following conditions:—

(*a*) Subject to the provisions of sub-paragraph (*b*) of this paragraph, the compensation shall be paid to, or in trust for the officer or servant concerned or in the event of his death to his legal personal representatives and not otherwise.

(*b*) Any compensation payable in respect of loss or diminution of pension rights shall, if the officer or servant requests the Commission so to do, be paid to, or in trust for, such person as is entitled to receive the corresponding payment under any pension scheme associated with his employment.

(*c*) Save in so far as is permitted by the foregoing provisions of this Regulation, no compensation payable under these Regulations shall be assignable.

(2) Any compensation payable by the Commission shall be or commence to be payable at the date fixed by the Commission or the tribunal, as the case may be.

Given under the official seal of the Minister of Transport this twenty-fifth day of July, nineteen hundred and fifty.

(L.S.) *Alfred Barnes,*
The Minister of Transport.

FIRST SCHEDULE

Determination of Compensation

Procedure

1. Every claim for compensation made under these Regulations, and every request for a review of an award of compensation as provided for in paragraphs 6, 10 and 15 of the Second Schedule to the said Regulations, shall be made in accordance with the following provisions of this Schedule.

2. Every such claim and every such request shall be made in such form and in such manner, and addressed to such an Executive, as the Commission may determine.

3. In the event of the death of a person who has made a claim or who, if he had survived, could have made a claim for compensation under the said Regulations, such claim may be continued by or may be made by his legal personal representative.

4. On receipt of any such claim or request the Commission shall consider the same in accordance with the provisions of the said Regulations and of the Second Schedule thereto, and shall within the time therein prescribed notify the claimant in writing of their decision in respect thereto.

5. Every such notification of a decision by the Commission shall in the case of an award or a review of an award of compensation or of a refusal to make or review an award of compensation, contain a statement directing the attention of the claimant to his right, if he is aggrieved by the decision, to refer the matter to a tribunal.

6. Every claimant for compensation who is aggrieved by a decision of the Commission, including a decision reviewing or refusing to review an award of compensation, may within three months of the decision being notified to him, require the matter to be referred to a tribunal.

7. Every claimant who desires to have such a matter referred to a tribunal shall give notice thereof in such form and in such manner, and addressed to such an Executive, as the Commission may determine. On receipt of such a notice the Commission shall refer the matter to the tribunal appointed to determine the matter so referred.

8. A claimant, if so required by the Commission, shall attend before the Commission or any person duly appointed in that behalf by the Commission, and answer any questions touching the matters set forth in his claim, and shall further produce all books, papers and other documents in his possession or under his control relating to his claim so however that, when so attending, a claimant may, if he so desires, be accompanied and be represented by his adviser.

SECOND SCHEDULE

Assessment of Compensation for Pecuniary Loss or Worsening of Conditions

1. Loss of Emoluments through Abolition of Office, or Discharge

Interim Payment of Compensation

1. On receipt of a first claim for compensation in respect of loss of employment, made after the manner set out in the First Schedule to these Regulations, the Commission shall consider forthwith whether the claimant satisfies the conditions of eligibility for the payment of compensation set out in Regulation 2, and if they consider that these conditions are not satisfied, shall so advise the claimant within four weeks of the receipt of the claim.

2. If the Commission do not advise the claimant within four weeks that they consider his claim is unfounded, they shall forthwith, commence to make an interim payment of compensation to him until such time, not being later than thirteen weeks after the receipt of the claim, as they decide the amount of compensation payable to him in accordance with paragraphs 4 and 5 of this Schedule, and advise him accordingly.

3. The interim payment shall not exceed an amount which, together with any sums the applicant is receiving under a service agreement or contract, and two-thirds of any unemployment, sickness or injury benefits he may be drawing, would equal two-thirds of his current net emoluments immediately before his loss of employment. It shall be made at intervals equivalent to those at which the applicant's emoluments were previously paid, and may be reduced or terminated by the Commission if during its currency the applicant obtains employment or fails to satisfy the Commission that he is actively seeking suitable employment. The Commission may require, as a condition of continuing to make any interim payment, that the recipient should register with the Ministry of Labour and National Service or enter upon a Ministry of Labour and National Service training course.

Compensation Award

4.—(1) For the purpose of determining whether compensation should be awarded to any person for loss of emoluments, and if so the amount of that compensation, regard shall be had to—

(i) the existence in his case of any right or expectation under customary practice to the payment of compensation in the event of discharge, of reduction in earnings or of worsening of conditions;

(ii) the conditions upon which he held his appointment, including in particular its security of tenure, whether by law or by practice;

(iii) the conditions, including security of tenure, whether by law or by practice, of any other employment he may have obtained;

(iv) the extent to which the claimant has sought suitable employment and the emoluments which he has, or might have acquired by accepting other suitable employment, including retraining, offered to him;

(v) the amount of any compensation recovered under the Reinstatement in Civil Employment Act, 1944(a);

(vi) the amount of any other compensation payable under these Regulations or any other regulations made by the Minister under Section 101 of the Act or in pursuance of any such scheme, agreement or order as is referred to in Section 102 of the Act;

(vii) all the other circumstances of his case.

(2) Compensation under this paragraph shall be awarded as follows:—

(i) in the case of an applicant who has any such right or expectation as is referred to in subparagraph (1) (i) of this paragraph—

(*a*) if the right or expectation is to the payment of compensation until normal maximum retiring age, in accordance with paragraph 5 (1) of this Schedule;

(*b*) if the right or expectation is to the payment of compensation otherwise than until normal maximum retiring age, in accordance with paragraph 5 (2) of this Schedule;

(ii) in the case of an applicant who has no such right or expectation as is referred to in subparagraph (1) (i) of this paragraph, in accordance with paragraph 5 (3) of this Schedule;

and shall be paid at intervals equivalent to those at which the emoluments of the applicant were previously paid.

5.—(1) Compensation for loss of emoluments awarded under this subparagraph shall, subject to paragraph 19 of this Schedule, be payable until normal maximum retiring age or the commencement, if earlier, of periodical payments by virtue of any pension scheme associated with his employment and the annual sum so awarded shall not exceed the aggregate of the following sums:—

(i) for every completed year of whole time service, one-sixtieth of the applicant's current net emoluments;

(ii) in the case of an applicant aged over forty-five, one-sixtieth of his current net emoluments for every completed year of whole time service since he attained the age of forty-five:

Provided that the annual rate of compensation shall not in any event exceed two-thirds of the current net emoluments of the applicant immediately before the loss of employment.

(2) Compensation for loss of emoluments awarded under this subparagraph shall, subject to the provisions thereof, be payable for a period of not less than thirteen weeks (inclusive of any period in respect of which interim payments of compensation have been made) or in the case of an applicant aged over forty-five, of thirteen weeks (inclusive of any such period as aforesaid) extended by an additional period of one week for every completed year of whole time service since he attained the age of forty-five subject to a maximum addition of thirteen such periods:

(a) 7 & 8 Geo. 6. c. 15.

Provided that—

(i) the weekly rate of compensation awarded shall not exceed an amount which, together with two-thirds of any unemployment, sickness or injury benefits he may be drawing would equal two-thirds of the weekly rate of his current net emoluments calculated at a weekly rate;

(ii) the total amount of compensation payable to an applicant under this subparagraph shall not in any event exceed the total amount of compensation which would have been payable to him had he been entitled to an award of compensation under subparagraph (1) of this paragraph;

(iii) no compensation shall be payable in respect of any week after the applicant ceases to suffer loss of emoluments or, subject to paragraphs 11 and 12 of this Schedule, after the applicant reaches normal maximum retiring age.

(3) Compensation for loss of emoluments awarded under this subparagraph shall, subject to the provisions thereof, be payable for a period of thirteen weeks (inclusive of any period in respect of which interim payments of compensation have been made) or in the case of an applicant aged over forty-five, of thirteen weeks (inclusive of any such period as aforesaid) extended by an additional period of one week for every completed year of whole time service since he attained the age of forty-five subject to a maximum addition of thirteen such periods:

Provided that the provisions of the provisos to the last preceding subparagraph shall apply in relation to compensation awarded under this subparagraph as they apply in relation to compensation awarded under that subparagraph.

6. The Commission shall have discretion to review an award of compensation at intervals of not less than six months and to alter it, either upwards or downwards, in the light of any change in the circumstances of the case, subject however to no such review being, save in exceptional circumstances, made later than two years after the first award of compensation. Similarly, an applicant may, at intervals of not less than six months and within a period not, save in exceptional circumstances, exceeding two years, request the Commission to review the award made to him if he considers that there has been a material change in the circumstances to which regard was had when the award was made.

II. *Diminution of Emoluments or Non-pecuniary Worsening of Conditions*

7. No interim payment shall be made in respect of compensation for diminution of emoluments or worsening of conditions, but the Commission shall decide the amount of compensation payable and advise the applicant accordingly not later than thirteen weeks after the date of receipt of the claim.

8.—(1) For the purpose of determining whether compensation should be awarded to any person for diminution of emoluments or worsening of conditions, and if so the amount of that compensation, regard shall be had to—

(i) the existence in his case of any right or expectation under customary practice to the payment of compensation in the event of discharge, of reduction in earnings or of worsening of conditions;

(ii) the conditions upon which he held his employment, including in particular its security of tenure, whether by law or by practice;

(iii) the amount of any other compensation payable under these Regulations or any other regulations made by the Minister under Section 101 of the Act, or in pursuance of any scheme, agreement or order as is referred to in Section 102 of the Act;

(iv) all the other circumstances of the case.

(2) Compensation under this paragraph shall be awarded as follows:—

(i) in the case of an applicant who has any such right or expectation as is referred to in subparagraph (1) (i) of this paragraph—

(*a*) if the right or expectation is to the payment of compensation until normal maximum retiring age, in accordance with paragraph 9 (1) of this Schedule;

(*b*) if the right or expectation is to the payment of compensation otherwise than until normal maximum retiring age, in accordance with paragraph 9 (2) of this Schedule;

(ii) in the case of an applicant who has no such right or expectation as is referred to in subparagraph (1) (i) of this paragraph, in accordance with paragraph 9 (3) of this Schedule;

and shall be paid at intervals equivalent to those at which the emoluments of the applicant were previously paid.

9.—(1) Compensation for diminution of emoluments or worsening of conditions awarded under this subparagraph shall, subject to paragraph 19 of this Schedule be payable until normal maximum retiring age or the commencement, if earlier, of periodical payments by virtue of any pension scheme associated with his employment and the annual sum so awarded shall not exceed the figure which bears to the maximum amount which could have been awarded had the applicant been entitled to an award of compensation under paragraph 5 (1) of this Schedule the same ratio as the amount by which his current net emoluments are diminished bears to their amount before diminution. Furthermore, no compensation shall be payable if this ratio is less than two and a half per cent.

(2) Compensation for diminution of emoluments or worsening of conditions awarded under this subparagraph shall, subject to the provisions thereof, be payable for a period of not less than thirteen weeks or in the case of an applicant aged over forty-five, of thirteen weeks extended by an additional period of one week for every completed year of whole time service since he attained the age of forty-five, subject to a maximum addition of thirteen such periods and the weekly rate of compensation so awarded shall not exceed the figure which bears to the weekly rate of the maximum amount which could have been awarded had he been entitled to an award of compensation under paragraph 5 (2) of this Schedule the same ratio as the amount by which his current net emoluments are diminished bears to their amount before diminution:

Provided that—

(i) no compensation shall be payable if the ratio is less than two and a half per cent.;

(ii) the total amount of compensation payable to an applicant under this subparagraph shall not in any event exceed the total amount of compensation which would have been payable to him had he been entitled to an award of compensation under subparagraph (1) of this paragraph;

(iii) no compensation shall be payable in respect of any week after the applicant ceases to suffer diminution of emoluments or worsening of conditions or, subject to paragraphs 11 and 12 of this Schedule, after the applicant reaches normal maximum retiring age.

(3) Compensation for diminution of emoluments or worsening of conditions awarded under this subparagraph shall, subject to the provisions thereof, be payable for a period of thirteen weeks or in the case of an applicant aged over forty-five, of thirteen weeks extended by an additional period of one week for every completed year of whole time service since he attained the age of forty-five, subject to a maximum addition of thirteen such periods and the weekly rate of compensation so awarded shall not exceed the figure which bears to the weekly rate of the maximum amount which could have been awarded had he been entitled to an award of compensation under paragraph 5 (3) of this Schedule the same ratio as the amount by which his current net emoluments are diminished bears to their amount before diminution:

Provided that the provisions of the provisos to the last preceding subparagraph shall apply in relation to compensation awarded under this subparagraph as they apply to compensation awarded under that subparagraph.

10. Awards for diminution of emoluments or worsening of conditions shall be subject to review on the same basis as is set out in paragraph 6 of this Schedule, except that in the case of officers or servants in the employ of the Commission or a controlled body such reviews may take place, at intervals of not less than six months, any time after the relevant event.

III. *Extension of Compensation after Normal Maximum Retiring Age*

11. In the case of an existing officer or servant receiving compensation for loss or diminution of emoluments or worsening of conditions, the Commission or the tribunal may in their discretion, when they are satisfied that the officer or servant would have continued to work beyond normal maximum retiring age, extend the period of the award of compensation beyond that age but, in the case of an extension for a period expressed to be during his lifetime, at a rate one half of the rate of compensation being paid before normal maximum retiring age.

12. If an existing officer or servant suffers loss or diminution of emoluments or worsening of conditions after normal maximum retiring age, the Commission or the tribunal may, in their discretion, award him compensation at the rate which would have been awarded to him had the loss, diminution or worsening occurred shortly before normal maximum retiring age, but at a salary and with length of whole time service equal to those at the time of the loss, diminution or worsening, save that, in the case of an award for a period expressed to be during his lifetime, the rate shall not exceed one half of that which would have been so awarded.

IV. *Compensation for Loss or Diminution of Pension Rights in the Case of Pensionable Officers and Servants*

13. Compensation for loss or diminution of pension rights, where such loss is established, shall, subject to paragraphs 15 and 19 of this Schedule, be awarded as follows:—

(i) in the case of an applicant who has suffered a loss of pension rights, in accordance with paragraph 14 (1) of this Schedule;

(ii) in the case of an applicant who has suffered a diminution of pension rights, in accordance with paragraph 14 (2) of this Schedule;

and shall be payable to, or in respect of the applicant on his reaching normal maximum retiring age or on the happening of any other contingency (which expression includes the exercise of any right to receive a pension on retirement before reaching normal maximum retiring age) carrying entitlement to pension under the pension scheme associated with his employment.

14.—(1) Compensation for loss of pension rights awarded under this subparagraph shall, subject to the provisions thereof, be payable by way of a payment or payments corresponding to and at the same intervals as those which would have been made under the pension scheme associated with his employment had the applicant not suffered such a loss, and any payment so made shall not exceed the aggregate of the following sums:—

(i) The sum which would have been payable to or in respect of the applicant by virtue of the said pension scheme had he attained normal maximum retiring age immediately before the loss occurred, but at a salary and with length of service ranking for benefit under that scheme equal to those at the time of the loss;

(ii) the additional sum which would have been so payable had the applicant had one additional year of service ranking for benefit under the said pension scheme without increase in emoluments for each completed year of whole time service above the age of 40, not exceeding the number of years to be served by him before reaching normal maximum retiring age (or where the Commission or the tribunal are satisfied that the applicant would have continued to work beyond that age, the age to which they are satisfied he would have continued to work), or 10 years, whichever shall be the less.

Provided that—

(i) in the calculation of the said sums any requirement of the said pension scheme as to a minimum qualifying period of service shall be disregarded;

(ii) where an applicant has received under the provisions of the said pension scheme any payment by way of a return of contributions and interest paid

by him, with or without interest thereon, and does not within three months of the date of the receipt thereof or of the date on which these Regulations come into operation, whichever is the later, pay to the Commission the aggregate amount of all such payments, the compensation payable to him by the Commission under this sub-paragraph shall be reduced throughout in the proportion which the payment bears to the estimated capital value at the date when he loses his pension rights of the compensation which but for this proviso would be payable to him under this paragraph. The said estimated capital value shall be determined by an actuary agreed upon by the Commission and the applicant or in default of agreement by an actuary appointed by the President of the Institute of Actuaries or the Faculty of Actuaries in Scotland. In this proviso the expression "actuary" means a Fellow of the Institute of Actuaries or the Faculty of Actuaries in Scotland. The fees of any actuary appointed for the purposes aforesaid shall be defrayed by the Commission.

(iii) no payment of compensation under this sub-paragraph made at any time shall be such that the amount thereof exceeds the amount which would have been payable to or in respect of the applicant under the said pension scheme at that time had he suffered no loss of pension rights.

(2) Compensation for diminution of pension rights awarded under this sub-paragraph shall, subject to the provisions thereof, be payable by way of a payment or payments additional to those payable to or in respect of the applicant under the provisions of the pension scheme associated with his employment and any payments so made shall not exceed the difference between the payment made under the said pension scheme and the payment which would have been made thereunder if the applicant had suffered the loss after he had had one additional year of service ranking for benefit under that scheme with emoluments equal to those immediately before the date of loss for each completed year of whole time service above the age of 40, not exceeding the number of years to be served by him before reaching the normal maximum retiring age (or where the Commission or the tribunal are satisfied that the applicant would have continued to work beyond that age, the age to which they are satisfied he would have continued to work), or 10 years, whichever shall be the less, and had the loss occurred at the expiration of the years so added.

Provided that—

(i) in the calculation of the said difference any limitation in the said pension scheme on the number of years of service ranking for benefit shall be disregarded;

(ii) no payment of compensation under this sub-paragraph made at any time, shall be such that the amount of that payment, when added to any payment due to be made to or in respect of the applicant under the said pension scheme at that time, exceeds the amount which would have been payable to or in respect of him under that scheme at that time had he suffered no diminution of pension rights.

15. In determining the number of years, if any, to be added for the purpose of assessing the compensation to be awarded under the provisions of the last preceding paragraph of this Schedule, regard shall be had to the considerations set out in sub-paragraphs (ii) to (vii) of paragraph 4 (1) of this Schedule, and also to the pension arrangements attaching to any employment which the officer or servant may have obtained, or the considerations set out in sub-paragraphs (ii) to (iv) of paragraph 8 (1) of this Schedule, as the case may be. Such determination shall be made at the same time as the award, if any, of compensation for loss or diminution of emoluments is determined, or if no application for such an award has been made within thirteen weeks of the receipt of the claim for compensation for loss or diminution of pension rights, and any award made shall be subject to review on the same basis as is set out in paragraph 10 of this Schedule.

V. Miscellaneous

16. If a person receiving compensation from the Commission for loss of employment, diminution of emoluments or worsening of conditions becomes an officer or servant of the Commission or of a controlled body he shall not, so long as he remains such an officer or servant, be entitled to receive any greater sum by way of compensation than that which would have been awarded to him for diminution of emoluments or worsening of conditions had he remained in the employment of the Commission or of the controlled body.

17. There shall be set off against the interim compensation payment or the compensation award made to a claimant any payment for breach of contract to which he may be entitled arising out of any service agreement or contract.

18. Subject to the provisions of this paragraph, an award of compensation may be made retrospective, but not, save in exceptional circumstances, to a date more than thirteen weeks earlier than the date of receipt of the claim by the Commission:

Provided that—

(i) where a person has suffered a loss entitling him to compensation under these Regulations and that person complies with the procedure and conditions set out in the First Schedule to these Regulations within thirteen weeks of the date of such loss; or

(ii) where before the coming into operation of these Regulations a person has suffered a loss which would have entitled him to compensation under these Regulations had they been in force at the time of the loss, and that person complies with the procedure and conditions set out in the First Schedule to these Regulations within thirteen weeks of the coming into operation of these Regulations;

the award of compensation shall be made retrospective to the date of such loss, due regard being had to any interim payments of compensation which have been made.

19. The Commission may, at their sole option, compound their liability to make payments of compensation awarded in accordance with paragraph 5 (1) of this Schedule or in accordance with paragraph 9 (1) of this Schedule, as the case may be, and under paragraph 13 of this Schedule by payment of an immediate lump sum equal to the present actuarial value of such payments, if the lump sum does not exceed £250. In any other case of payment of compensation so awarded the Commission shall have discretion at the request of the person in receipt of compensation, after having regard to his state of health and other circumstances, to compound

(i) up to one-quarter of their liability other than their liability to pay compensation for loss or diminution of pension rights; and

(ii) up to one-quarter of their liability to pay compensation for loss or diminution of pension rights or, if the pension scheme relating to those rights enabled them to be compounded to a greater extent, up to that extent.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

(Paragraph numbers refer to the Second Schedule)

These Regulations provide the machinery for payment by the British Transport Commission of compensation to officers or servants employed by bodies that were completely controlled by one or more of the railway or canal undertakings specified in the Third Schedule to the Transport Act, 1947. Compensation is payable to those who suffer loss of employment or loss or

diminution of emoluments or pension rights or whose position is worsened in consequence of the transfer to the Commission of the controlling bodies by Part II of the Act.

To be eligible for compensation a claimant must have been employed by a controlled body ; by a railway or canal undertaking ; by the Railway Clearing House ; or on A or B licence road haulage work, after attaining the age of eighteen years, from the 1st January, 1940, up to the 1st January, 1948, (see definitions of " existing officer or servant " and " whole time service " in Regulation 1 (3)). Provision is made for war service to count. If the claimant has lost his employment and has not refused reasonably comparable alternative work (Regulation 2 (1)), he will be eligible for " interim " payment of two-thirds of his net emoluments, with deductions if he gets other employment or unemployment, sickness or injury benefit, for a period of up to thirteen weeks (paragraphs 2 and 3). During this period his claim will be assessed. The actual award in any particular case will have regard to the circumstances of the case as set out in paragraph 4. It will be particularly related to the existence of any right or expectation to compensation in his previous employment (paragraph 4 (2)) but there is a minimum award which is not dependent on any expectation. It may vary between an award until retiring age, based on length of service (paragraph 5 (1)) and, where no expectation can be shown, an award for a minimum of thirteen weeks, rising in the case of the man over 45 to a possible minimum of 26 weeks (paragraph 5 (3)), with provision for intermediate awards (paragraph 5 (2)). The award will be subject to review for a period of two years (paragraph 6). Where a claimant would normally have continued in his old employment after the age of 65 (60 in the case of a female), the award may be continued after that age (paragraphs 11 and 12). In the case of reduction of emoluments or worsening of conditions, there will be no " interim " payment and the maximum payment will be proportionately reduced. The award will be subject to review at any future date (paragraphs 7-10).

Where a person loses pension rights, provision is made for the payment of compensation equal to the pension he would have received in respect of the rights lost. In the case of persons over 40, provision is made for crediting them with added years of service in recognition of their loss of future years of pensionable service or reduction of pensionable emoluments (paragraphs 13-15).

Overlap with earnings from subsequent service with the Commission is avoided (paragraph 16), and there is certain provision for commutation (paragraph 19). A claimant who is aggrieved by a decision on his compensation may appeal to referees appointed by the Minister of Labour and National Service (Regulation 3 (3)).

No claim will be entertained if its cause arises later than ten years after the 1st January, 1948, or if it is made later than two years after the claimant could reasonably have known of his right to claim compensation (Regulation 2 (1)).