5. TRANSFERRED UNDERTAKINGS (COMPENSATION AND PENSIONS)

The Transferred Undertakings (Compensation to Employees) Regulations, 1948

1948 No. 1700

Made - - - -	21*st July*, 1948*
Coming into Operation	31*st July*, 1948

10 & 11 Geo. 6. c. 49.

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

1.—(1) These Regulations shall come into operation on the 31st day of July, 1948, and shall have effect from the 31st December, 1947.

(2) These Regulations may be cited as "The Transferred Undertakings (Compensation to Employees) Regulations, 1948."

(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:

"current net emoluments", in relation to an existing officer or servant suffering loss of employment or loss or diminution of emoluments, means his annual rate of emoluments at the date of such loss or diminution, 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:

"emoluments" means all salary, wages, fees (excluding director's fees) and other payments of a similar nature paid or made to an officer or servant as such for his own use; all bonuses, allowances, commissions, gratuities, special duty and overtime pay that are of a recurrent (whether seasonal or otherwise) nature; and 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. It excludes all payments for travelling, subsistence, accommodation, engagement of assistance and other expenses incurred in the course of employment, and all 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:

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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 Lords on the 15th July, 1948, and by the House of Commons on the 20th July, 1948.

" existing officer or servant " means a person who was immediately before the date of the relevant event employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House and 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 otherwise engaged in whole time 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 any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House, 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 any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House:

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

" relevant event " means

(*a*) in relation to an officer or servant employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act, not being a person employed in connection with the Railway Clearing House, the transfer effected by Part II of the Act;

(*b*) in relation to an officer or servant employed as an officer or servant by or in connection with the Railway Clearing House, the transfer effected by Part II of the Act or the coming into operation of any provisions of a scheme under the Act relating to the Railway Clearing House:

" 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 extension of war service or voluntary enlistment after the cessation of hostilities otherwise than with the consent of the body in whose service the officer or servant was, both at the time of the consent and immediately before the commencement of his war service:

" 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 any of the bodies specified in the Third Schedule to the Act, 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 any of the said bodies, 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.

52 & 53 Vict. c. 63.

(4) The Interpretation Act, 1889, 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

(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 a reasonably comparable office or situation; or

(*b*) having been required to perform duties such as are not analogous or which are an unreasonable addition to those which he might formerly have been required to perform, he relinquishes his office or situation; or

(*c*) 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

(*d*) his emoluments are reduced; or

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

(*f*) 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 or not analogous 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 undertaking in which 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 agreement or contract for the rendering of personal services, or any variation of such an agreement or contract, disclaimed by the Commission under the provisions of the Act; or

(ii) 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

(iii) 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 or relinquishment of his office or situation, the dispensing by the Commission 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 regulations made by the Minister under Section 98 of the Act, including any pension scheme established or continued (with or without amendment) by such regulations.

(*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 21st day of July, nineteen hundred and forty-eight.

(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, 9 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 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.

SECOND SCHEDULE

ASSESSMENT OF COMPENSATION FOR PECUNIARY LOSS OR WORSENING OF CONDITIONS

I. Loss of Emoluments through Abolition of Office, Relinquishment of Post, 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, 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 three months 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 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 or enter upon a Ministry of Labour training course.

Compensation Award

4. 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 conditions upon which he held his appointment, including in particular its security of tenure, whether by law or by practice;

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

(iii) 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;

7 & 8 Geo. 6. c. 15.

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

(v) all the other circumstances of his case.

5. Compensation for loss of emoluments shall, subject to paragraph 19, be awarded by way of an annual sum, payable until normal maximum retiring age or the commencement, if earlier, of periodical payments by virtue of any regulations made by the Minister under Section 98 of the Act, including any pension

scheme established or continued (with or without amendment) by such regulations, which 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 his loss of employment, and if the period or periods of his 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.

In this paragraph the expression "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.

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 three months after the date of receipt of the claim.

8. In determining whether compensation shall be awarded and, if so, the amount of that compensation, regard shall be had to the conditions upon which an applicant held his appointment, including in particular its security of tenure, whether by law or by practice, and all the other circumstances of the case.

9. 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, except that in the case of officers or servants transferred to the Commission such reviews may take place, at intervals of not less than six months, any time after the relevant event.

10. The compensation awarded to an applicant who suffers diminution of emoluments shall, subject to paragraph 19, be awarded by way of an annual sum payable until normal maximum retiring age or the commencement, if earlier, of periodical payments by virtue of any regulations made by the Minister under Section 98 of the Act, including any pension scheme established or continued (with or without amendment) by such regulations, which sum shall not exceed the figure which bears to the maximum amount which could have been awarded had he lost his employment 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.

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, 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 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 after normal maximum retiring age, the Commission or the tribunal may, in their discretion, award him compensation at a rate not exceeding one half of that which would have been awarded to him had the loss or diminution 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 or diminution.

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 or diminution is established, shall be awarded by way of a payment or payments additional to those payable to or in respect of the officer or servant by virtue of any regulations made by the Minister under Section 98 of the Act, including any pension scheme established or continued (with or without amendment) by such regulations. Subject to paragraphs 14, 15 and 19, any payment so made shall not exceed the difference between the payment made by virtue of the said regulations and the payment which would have been made by virtue of those regulations if the officer or servant had had one additional completed year of whole time service 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 the normal maximum retiring age (or where the Commission or the tribunal are satisfied that the officer or servant would have continued to work beyond that age, the age to which they are satisfied that he would have continued to work), or ten years, whichever shall be the less. In the calculation of such difference in the case of an award for diminution of pension rights, the Commission may disregard any limitation in a pension scheme on the number of years of service ranking for benefit.

For the purposes of this paragraph the expression " completed years of whole time service " shall have the same meaning as it has for the purposes of paragraph 5, and any payment made shall be made at the same times, in the same manner and subject to the same conditions as the corresponding payments made by virtue of the said regulations.

14. No payment of compensation under the last preceding 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 an officer or servant by virtue of any regulations made by the Minister under Section 98 of the Act, including any pension scheme established or continued (with or without amendment) by such regulations, at that time, exceeds the amount which would have been payable to or in respect of him by virtue of those regulations at that time had he suffered no loss or 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 paragraph 13 of this Schedule, regard shall be had to the considerations set out in paragraph 4 thereof, and also to the pension arrangements attaching to any employment which the officer or servant may have obtained, or to the considerations set out in paragraph 8 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 three months 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 9 of this Schedule.

V. Miscellaneous

16. If a person receiving compensation from the Commission for loss of employment or diminution of emoluments becomes an officer or servant of the Commission or of an Executive, 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 had he remained in the employment of the Commission.

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

18. An award of compensation may be made retrospective, but not, save in exceptional circumstances, to a date more than three months earlier than the date of receipt of the claim by the Commission.

19. The Commission may, at their sole option, compound their liability to make annual awards of compensation to a person by payment of an immediate lump sum equal to the present actuarial value of such awards, if the lump sum does not exceed £250. In any other case 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

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

(*b*) 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 of railway and canal undertakings, and of the Railway Clearing House, who suffer loss of employment or loss or diminution of emoluments or pension rights or whose position is worsened in consequence of any transfer made by or under the Transport Act, 1947, of any such undertaking or of the Railway Clearing House.

To be eligible for compensation a claimant must have been in such employment, after attaining the age of eighteen years, from the 1st January, 1940, up to the date of transfer (see definitions of " existing officer or servant " and " whole time service " in Regulation 1 (3)). If he loses or relinquishes his employment and has not refused reasonable 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 benefit, for a period of up to three months (paragraphs 2 and 3). During this period his claim will be assessed. Compensation will be payable to him up to age 65

(60 in the case of a female), or the age at which he would have begun to receive a pension had he not lost his employment, and it will be subject to a maximum based on his net emoluments and the length of his service (paragraph 5). The actual award in any particular case will have regard to the circumstances set out in paragraph 4, including the security of the previous employment and the extent to which he has sought or refused suitable alternative employment. 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 at half rate (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. Similar circumstances will govern the actual amount awarded, and the award will be subject to review at any future date (paragraphs 7-10).

Provision is made in separate regulations for a claimant who had any pension rights, including an expectation of a pension under customary practice, in his old employment, to have those rights fully preserved in the form in which they existed at the time of loss of that employment. In the case of persons over 40, the present Regulations make provision 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 transfer or scheme made by or under the Transport Act, 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)).

The Transferred Undertakings (Pensions of Employees losing Employment) Regulations, 1948

1948 No. 1585

Made - - - -	*7th July*, 1948
Laid before Parliament	*8th July*, 1948
Coming into Operation	31*st July*, 1948

10 & 11 Geo. 6. c. 49.

The Minister of Transport, in exercise of the powers conferred upon him by Section 98 of the Transport Act, 1947, and of all other powers him enabling, hereby makes the following Regulations:—

1.—(1) These Regulations shall come into operation on the 31st day of July, 1948, and shall have effect from the 31st December, 1947.