BRITISH TRANSPORT COMMISSION

1959 No. 1329

The Transferred Undertakings (Compensation to Employees) Regulations, 1959

Made - - - -	*27th July*, 1959
Coming into Operation	*10th August*, 1959

Whereas a draft of these Regulations has been approved by resolution of each House of Parliament;

Now, therefore, the Minister of Transport and Civil Aviation in exercise of his powers under section 101 of the Transport Act, 1947(a), and of all other powers him enabling in that behalf, hereby makes the following Regulations:—

1.—(1) These Regulations shall come into operation on the fourteenth day after the date on which these Regulations are made and shall have effect from the 31st March, 1948.

(2) These Regulations may be cited as "The Transferred Undertakings (Compensation to Employees) Regulations, 1959".

(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 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:

"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 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

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

(*c*) the money value of all travel privileges, free accommodation, and 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 assistance and other expenses incurred in the course of employment, overtime or 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 1st April, 1948, employed as an officer or servant by the Minister as successor to the Commissioners of the Caledonian Canal or the Board of Trade in connection with the Caledonian and Crinan Canals or Holyhead Harbour 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 1st April, 1948, 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 and Civil Aviation:

"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 the Minister as successor to the Commissioners of the Caledonian Canal or the Board of Trade in connection with the Caledonian and Crinan Canals or Holyhead Harbour, or

(*b*) employed 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 the Minister as successor to the Commissioners of the Caledonian Canal or the Board of Trade in connection with the Caledonian and Crinan Canals or Holyhead Harbour:

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

"relevant event" means in relation to an existing officer or servant the transfer effected by section 28 of the Act, if immediately before the 1st April, 1948, he was employed in connection with the Caledonian and Crinan Canals or the transfer effected by section 69 of the Act, if immediately before that date he was employed in connection with Holyhead Harbour:

"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 Her 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 employer 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—

(*a*) as an officer or servant;

(*b*) by any of the predecessors of the Minister as successors to the Commissioners of the Caledonian Canal or by those Commissioners, in connection with the Caledonian and Crinan Canals or by any of the predecessors of the Minister as successors to the Board of Trade, or by that Board or any of their predecessors, in connection with Holyhead Harbour;

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

(*d*) 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.

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

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

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

(ii) the cause of the claim to compensation arose before the 1st April, 1958, 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 these Regulations came into operation; and

(iii) in consequence of the relevant event one or more of the following conditions are satisfied in relation to such person, 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*) 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 1st April, 1948, he was performing or might reasonably have been required to perform; or

(a) 52 & 53 Vict. c. 63.

(*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 1st April, 1948, 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 that date or that they involve a transfer of his employment from one place to another place within Great Britain.

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 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.

(*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 and Civil Aviation this twenty-seventh day of July, 1959.

(L.S.)

Harold Watkinson,
The Minister of Transport and Civil Aviation.

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 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 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

I. *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, 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 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. 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;

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

(v) all the other circumstances of his case.

5. Compensation for loss of emoluments shall, subject to paragraph 19 of this Schedule, be awarded by way of an annual sum, payable until normal maximum retiring age, 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

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

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 of this Schedule, 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 or worsening of conditions shall, subject to paragraph 19 of this Schedule, 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, 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 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 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 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. Subject to paragraphs 14, 15 and 19 of this Schedule, 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, 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 for loss of emoluments any payments payable to or in respect of him by virtue of any regulations made by the Minister under section 98 of the Act.

18. Subject to the provisions of this paragraph, an award of compensation may be made restrospective, 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 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.)

These Regulations provide the machinery for payment by the British Transport Commission of compensation to persons employed in connection with the Caledonian and Crinan Canals or Holyhead Harbour who suffer loss of employment or loss or diminution of earnings or pension rights or whose position is worsened in consequence of the transfer of those undertakings under the Transport Act, 1947.

The conditions which must be satisfied before a title to compensation can exist are prescribed in Regulation 2, in conjunction with the definitions in Regulation 1 (3). The First Schedule contains the provisions as to the procedure for dealing with claims; the Second Schedule contains the provisions as to assessment of compensation. There is provision for appeal to a tribunal appointed by the Minister of Labour and National Service (Regulation 3).