



**Legal Opinion L-2001-02**  
**January 25, 2001**

U.S. Railroad Retirement Board      Phone: (312) 751-7139  
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**TO** : Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Disclosure of Earnings  
Union Pacific Railroad

This is in reply to your memorandum of January 16, 2001, regarding a request for information by Union Pacific Railroad.

You advise that UP administers a pension plan for UP's former employees and survivors. The calculation under that plan requires an offset of a portion of the railroad retirement and social security benefits the beneficiaries under that plan receive.

In order to calculate the amount of the offset, UP has requested the earnings records for the employees involved.<sup>1</sup> UP initially advised that the earnings records would be used only to increase the amounts of the employees' pensions. Subsequently, UP has advised that the earnings records would be used to calculate more accurate pension rates generally; in other words, the pension rates of some employees and survivors could decline.

The Board is restricted with respect to the disclosure of information and records which pertain to an individual and which identify the individual to whom they pertain by section 12(d) of the Railroad Unemployment Insurance Act, which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act. Section 12(d) provides, in pertinent part, as follows:

Information obtained by the Board in connection with the administration of this Act shall not be revealed or open to inspection nor be published in any manner revealing an employee's identify: Provided, however, That (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this Act; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; (iii) any claimant of benefits under this Act shall, upon his request, be supplied with information from the Board's records pertaining to his claim; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 5 of this Act. \* \* \*

Under section 12(d), the earnings records of employees may not be disclosed without the consent of the individual to whom they apply unless one of the exceptions to the prohibition contained in that section applies. Since the individuals who receive pensions may have their pensions reduced through the disclosure of earnings records, exception (ii) above, applicable to situations where the employee is benefited, does not apply. None of the other exceptions have any application to disclosure of the earnings record in this case. Accordingly, the RRB may not disclose the earnings records requested by UP without the written authorization of each individual for whom records are requested.

It should be noted that disclosure of earnings records is protected by the Privacy Act of 1974 (5 U.S.C. § 552a). Routine uses of the RRB's Systems of Records do not authorize disclosure of earnings records (see RRB-22, Railroad Retirement, Survivor, and Pensioner Benefit System, in the RRB Privacy Act Systems of Records).

1. It appears that annuity amounts would not be sufficient for the purpose of computing the offset. For example, the Missouri Pacific Railroad System Pension Plan for Nonschedule Employees, one of the plans involved, provides that, in making the deductions the annuities are to be computed under laws, regulations, and practices in effect as of the date of termination of service. Changes in laws, etc., after that date are to be disregarded.