



Legal Opinion L-2003-07
July 2, 2003

U.S. Railroad Retirement Board Phone: (312) 751-7139
844 North Rush Street TTY: (312) 751-4701
Chicago Illinois, 60611-2092 Web: <http://www.rrb.gov>

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Dear xxxxxxxxxx:

This is in response to your request for confirmation that payments made by the Burlington Northern Santa Fe Railroad to members of the Transportation Communication Union pursuant to article IV, section 6 of the February 1965 Job Stabilization Agreement, as amended January 1980, constitute non-governmental unemployment and sickness benefits under the Railroad Unemployment Insurance Act (the RUIA), in light of a recent opinion issued by this Office concerning payments to members of the Brotherhood of Maintenance of Way Employees under a 1996 revision to the 1965 Agreement which was applicable to BMWWE members. As explained below, I can confirm that the previous determination that payments to TCU members are made pursuant to a non-governmental plan is correct. Consequently, payments under the 1980 BNSF-TCU Agreement do not reduce sickness or unemployment benefits under the RUIA, and do not constitute compensation creditable toward benefit entitlement under either the RUIA or Railroad Retirement Act (the RRA).

As you know, both the RUIA and RRA define creditable railroad compensation to an employee to include "the amount he is paid by the employer with respect to an identifiable period of absence from active service * * * [and] for loss of earnings resulting from his displacement to a less remunerative position or occupation." See RUIA section 1(i)(1), and RRA section 1(h)(2). However, section 1(j) of the RUIA accepts from the definition of compensation "any money payments received pursuant to any nongovernmental plan for Unemployment insurance, maternity insurance, or sickness insurance." Payments made to an employee under such a plan are also excluded from creditable railroad compensation under the Railroad Retirement Act, pertaining to supplemental unemployment plans established by employers for a class of employees generally. See RRA section 1(h)(6)(v).

Wage guaranty payments under the original February 1965 Agreement have been determined to constitute creditable pay for time lost within the meaning of RUIA section 1(i)(1) and RRA section 1(h)(2). See Legal Opinion L-84-162. Further, I recently reviewed a 1996 revision to the 1965 Agreement on behalf of the BMWWE members, and advised that wage guaranty payments under the terms of the revised agreement remained creditable compensation under the Acts. See Legal Opinion L-2002-13. For your convenience, copies of both legal opinions cited in this paragraph are enclosed.

The former Brotherhood of Railway, Airline and Steamship Clerks, predecessor to the TCU, also entered into an amended agreement with the Atchison, Topeka and Santa Fe Railway, predecessor to the BNSF, to be effective January 1, 1980. Article IV, section 6 of the 1980 amendment stated that the purpose of the section was to establish a nongovernmental plan for unemployment insurance to provide a benefit to supplement benefits paid under the RUIA. The payment under Article IV is reduced by benefits under the RUIA. By letter dated July 7, 1981, the Director of the Board's former Bureau of Unemployment and Sickness Insurance, acting on behalf of the Board, notified the parties to the agreement that the 1980 amendment established a nongovernmental plan for unemployment insurance within the meaning of section 1(j) of the RUIA. The Director correctly advised that these payments have no effect upon eligibility for benefits under the RUIA.



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In addition, consistent with the determination by the former Director of Unemployment and Sickness Insurance that payments received by employees under the 1980 amendment to the February 1965 Job Stabilization Agreement are made pursuant to a nongovernmental plan for unemployment insurance, I can advise that payments under the 1980 amendment are also exempt from the definition of railroad compensation under the RRA pursuant to section 1(h)(6)(v) of that Act.

I trust that this information will be of assistance to you.

Sincerely,

Steven A. Bartholow
General Counsel

Enclosures