



Legal Opinion L-2003-10
August 22, 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>

TO : Ann Chaney
Office of Management Member

FROM : Steven A. Bartholow
General Counsel

SUBJECT : CSX Corporation Severance Pay Plan
Compensation – Separation Allowance

This is in reply to your request for my opinion concerning the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of payments to employees of CSX Corporation in accordance with the provisions of the CSX Corporation Severance Pay Plan. As explained below, in my opinion payments under the Plan constitute railroad compensation under the Acts. Periodic payments are creditable to the month in which each installment is paid, while payment by lump sum is creditable only to the month in which the employee executes an agreement and release form. However, I must note that as I have not been provided the Plan or a summary plan description, my advice is based solely on my review of the "Employment Separation Agreement and Release Form" and my opinion is therefore predicated upon the information available.¹ -2-

Paragraph 6 of the Agreement and Release states in pertinent part that:

6. I understand that I will receive separation pay that is above and beyond any remuneration for the performance of services, benefit plan payments or any other amounts to which I am otherwise entitled * * *.

Separation pay will be in an amount calculated pursuant to the "Separation Pay Schedule" set forth in the Plan based on my monthly salary and length of Company service * * *. I understand that I may choose to receive this separation pay in the form of periodic payments for a limited period of time or as a single lump-sum payment.

* * * * *

I understand that under either of these options, the Company will withhold appropriate amounts for federal, state and local income taxes and employment taxes * * *. [I]f I choose payment on a periodic basis, payment will be made on or about the first of each month * * *. I further understand that throughout the period of time during which I receive separation pay in monthly payments, I will be entitled to participate in welfare benefits * * * [but] will not be eligible to participate in the * * * Thrift Plan * * * or to accrue any additional benefits under the CSX Pension Plan or accrue vacation or sick leave * * *. At the conclusion of the payments, my employment relationship with the Company shall cease.

¹ In particular, it is unclear whether the payments are offered in lieu of layoff benefits to employees facing indefinite furlough, or to employees who may remain in their existing position. See CSX Corporation, Inc. v. United States, 52 Fed. Cl. 208, 2002 U.S. Claims LEXIS 73, (Cl. Ct., 2002) (holding, inter alia, that the former are excluded from compensation under the Railroad Retirement Tax Act as supplemental unemployment insurance benefits, while holding the latter are taxable compensation.)



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In consideration of the agreement by CSX Transportation to pay these benefits, the signatory employee agrees "that my employment relationship with the Company will cease and terminate upon the date of the last payment * * * under this Agreement." The employee also agrees that:

Effective upon the date of this Agreement, I hereby relinquish forever any seniority rights I may have under any labor agreement with the Company, and I agree that until my employment relationship with the Company ceases, my compensation and other employment terms, conditions and benefits will be as set forth in paragraphs 6 [quoted above] and 7 [pertaining to prorating annual bonuses based on company performance] * * *.

As you know, section 1(h)(1) of the Railroad Retirement Act (RRA) defines compensation for benefit entitlement purposes under that Act in part as:

* * * any form of money remuneration paid to an individual for services rendered as an employee to one or more [railroad] employers * * * including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. A payment made by an employer to an individual through the employer's payroll shall be presumed, in absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. * * *

Section 1(h)(2) of the RRA further provides that:

An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. * * *

The Railroad Unemployment Insurance Act at section 1(i)(1) provides essentially the same definition with respect to compensation creditable for benefit entitlement purposes under that Act as well. In addition, regulations of the Board (20 CFR 211.9, 211.10) provide:

§211.9 Dismissal allowance.

Dismissal allowances paid to an employee under a protective labor agreement that covers the amounts paid for specific periods of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employment relationship.

§211.10 Separation allowance or severance pay.

Separation or severance payments are creditable compensation except that no part of such payment shall be considered creditable compensation to any period after the employee has severed his or her employer-employee relationship, except as provided for in §211.11 of this part [which allows a payment taxable only for tier I purposes under the Railroad Retirement Tax Act to be credited for purposes of calculating the tier I annuity component under the RRA pursuant to section 1(h)(8) of that Act].

This Office has considered prior CSX plans with provisions similar to those referred to in the "Separation and Release" form submitted, and has determined that a lump sum payment under these terms constitutes compensation for the month of election to receive the lump sum payment. See L-99-18 (CSX 1999 Voluntary Early Retirement and Voluntary Separation Program); L-2001-04 (CSX Special Enhanced Pension Benefits Program). Consistent with the reasoning of those opinions, I conclude that the lump sum payment provided by the CSX Corporation Severance Pay Plan is compensation under the Acts, creditable only through the month in which the payment is made.



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Where an employee receives separation or dismissal payments in installments, and resigns at the end of the period, the payments are compensation under the Acts, creditable to each month of payment. Reed v. Railroad Retirement Board, 145 F.3d 373, (D.C. 1998). Evidence of existence of continuation of the employment relationship during the period of payment includes retention of health benefits and other benefits accruing to employees. See Legal Opinions L-89-66 (Voluntary Resignation Agreement for Chessie System Noncontract Employees), and L-89-80 (Illinois Central Gulf Termination Agreement). The language of the "Separation and Release" form submitted evidences the intent that the employment relationship shall continue through the date of the last installment payment. Compare L-2002-12 (where employee is notified by letter that "employment is terminated" and then offered severance options, installment payments after execution of a release form are not creditable compensation.) Accordingly, based on the information you have furnished, in my opinion, monthly installment payments under the CSX Corporation Severance Pay Plan are compensation under the Railroad Retirement and Railroad Unemployment Insurance Acts, creditable to the months in which the payments are made, up to and including the last month of payment.

cc: Joseph M. Waechter
 Policy and Systems, Office of Programs