



**Legal Opinion L-2004-10**  
**June 2, 2004**

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** : Scott Kulmey  
Hearings Officer  
**Through:** Arthur A. Arfa  
Director of Hearings and Appeals

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

**SUBJECT** : Lake Terminal Railroad – United Transportation Union  
2003 Agreement - Separation Allowance Disqualification for Sickness Insurance  
Benefits

This is in reply to your request for my opinion regarding whether the payment received by the employee in the appeal pending before you constitutes a separation allowance which disqualifies the employee from receiving sickness insurance benefits pursuant to section 4(a-1)(iii) of the Railroad Unemployment Insurance Act. For the reasons set forth below, it is my opinion that the payment does disqualify the employee for the period calculated under 4(a-1)(iii).

The appellant has submitted a copy of a collective bargaining agreement between the Lake Terminal Railroad and the United Transportation Union (UTU), concluded June 20, 2003. Articles I through VIII of the agreement deal with issues such as wages and paid holidays not relevant to this discussion. Article IX states in part that the UTU recognizes “the carrier’s right to implement remote control technology, assign the associated duties to trainmen and eliminate the engineer’s position.” Article X states that “in consideration of the remote control agreement, the carrier has offered 70/80 retirements, plus a lump sum payment, to eligible employees in engine and train service, as set forth in Attachment ‘C.’”

The preamble to “Attachment C” of the June 2003 Agreement recites that subject to approval of the Board of Directors of the employer’s pension fund, the employer “offered the opportunity for voluntary early retirement, plus a lump sum payment, to active employees working in engine or train service” who met a service requirement for 2002 and who “as of April 17, 2003, met the eligibility requirements respecting age and continuous service, as set forth in the 70/80 provisions of the Non-Contributory Pension Plan.” The offer was evidently made to no more than four employees in total, and the amount of lump sum payment for eligible employees varied by class of employee, and by the number of eligible employees who accepted the early retirement offer.<sup>1</sup> Attachment C also stated that the lump sum was not credited as earnings for purposes of the company pension calculation, and did not constitute a “severance allowance” for purposes of any reduction in the company pension plan. Though employees had to notify the employer that they accepted the offer by April 21, 2003, the Attachment stated “no eligible employee was required to accept this offer.”

The appellant submitted a copy of a letter over his signature dated April 20, 2003, which states that he “accept[s] the 70/80 retirement and special lump sum retirement payment pertaining to the remote control agreement. It is understood that retirement must occur no later than May 31, 2003.” According to a copy of an interoffice communication of the employer dated May 16, 2003, which was submitted by the

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<sup>1</sup> The employer offered \$23,500 to “the engineer” if he alone retired; if at least one trainman retired as well, “the engineer” would receive \$28,500. If no engineer retired, only one trainman would be allowed to receive \$23,500; if an engineer retired, one trainman would receive \$28,500. In addition, where an engineer retired, early retirement would be offered to a total of three trainmen at \$15,667 each, or two trainmen at \$23,500 each.



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appellant, one engineer and one trainman elected to accept the offer made by the June 2003 Agreement. Each received a payment of \$28,500.

Section 4 of the Railroad Unemployment Insurance Act provides, in part, that:

(a-1) There shall not be considered as a day of unemployment, or as a day of sickness, with respect to any employee—

\* \* \* (iii) if he is paid a separation allowance, any of the days in the period beginning with the day following his separation from service and continuing for that number of consecutive fourteen-day periods which is equal, or most nearly equal, to the amount of the separation allowance divided (i) by ten times his last daily rate of compensation prior to his separation if he normally works five days a week \* \* \*;

An additional payment distributed from the company pension fund when the employee takes early retirement, if subject to the requirements for distribution established by the pension plan, is not a separation allowance for purposes of section 4(a-1)(iii). See Legal Opinion L-2004-09 (considering the CSX 2003/2004 Enhanced Pension Benefits Program). Because the lump sum payment made under Attachment C of the April 2003 Agreement is paid in conjunction with voluntary retirement under the employer's pension plan, it may be argued that it is not a separation allowance within the meaning of section 4(a-1)(iii). However, the General Counsel previously considered whether a lump sum payment under a voluntary retirement program disqualified the recipient from receiving unemployment or sickness insurance benefits in Legal Opinion L-96-10 (Conrail Voluntary Retirement Program). That opinion concerned so-called "bridge payments" under a Supplemental Pension Plan the employer offered to eligible employees if they would retire at age 55. The "bridge payments" under the Supplemental Plan were intended to span the time between the employee's early retirement and age 65, when the employee qualified for payment under the employer's normal pension plan. The General Counsel determined that as the purpose of the Voluntary Retirement Program was to induce employees to leave employment, and as the payment under the Supplemental Plan was "made in return for severance of employment", the payment received by the employees under the Supplemental Plan constituted a "separation allowance" within the meaning of section 4(a-1)(iii). In a later opinion regarding creditability of payments under the same Supplemental Plan as compensation for benefit calculation purposes, the General Counsel explained that disqualifying an employee who received Supplemental Plan payments from eligibility for unemployment insurance benefits was consistent with the purpose of the disqualification, which "is to avoid paying unemployment benefits to individuals who lack an economic need for such benefits due to the fact that they received a monetary incentive from their employer to retire." See Legal Opinion L-97-40.

The reasoning of Legal Opinions L-96-10 and L-97-40 applies to the payment received by employees under "Attachment C" of the June 2003 Agreement. The June 2003 Agreement is layered onto, rather than an integral part of, the normal retirement benefit paid by the employer's "70/80 retirement" plan. The June 2003 Agreement also explicitly pays the lump sum in exchange for the employee's agreement to retire, rather than as part of payment conditions specified by the employer's plan for pension distributions generally. Compare: L-2004-9 (the Program liberalized rules for a class of employee, who still might not immediately meet plan requirements for distribution). Finally, the language in the June 2003 Agreement regarding non-creditability of the payment as service under the employer's pension plan does not determine the effect of the payment under section 4(a-1)(iii), because the Board is not required to rely on the characterizations of the parties to the Agreement.

For the foregoing reasons, in my opinion a payment under Attachment C of the June 2003 Agreement between the Lake Terminal Railroad and the UTU disqualifies a recipient from eligibility for unemployment



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or sickness insurance benefits pursuant to section 4(a-1)(iii) of the Railroad Unemployment Insurance Act.

cc:     Director of Policy and Systems  
       Office of Programs