



Legal Opinion L-2005-12
May 3, 2005

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: Wayne J. Scharnak
Chief of Compensation and Employer Services

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Supplemental Pension Plan
Burlington Northern Santa Fe Railroad Company
Non-Salaried Employees 401(k) Retirement Plan

This is in reply to your request for a ruling as to whether the Non-Salaried Employees 401(k) Retirement Plan of the Burlington Northern Santa Fe Railroad Company is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act.

Section 216.42 of the Board's regulations defines a supplemental pension plan, in pertinent part, as follows:

- (a) What is a private railroad pension. * * * A private pension for purposes of this subpart is a plan that:
- (1) Is a written plan or arrangement which is communicated to the employees to whom it applies;
 - (2) Is established and maintained by an employer for a defined group of employees; and
 - (3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.
- (b) Defined contribution plan. A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

The plan at issue is a written plan, which is communicated to the employees to whom it applies. It is a defined contribution plan and is funded by employer and employee contributions. Employer contributions are to be made as "provided for in a collective bargaining agreement applicable to a participant."¹

On the basis of our review of the documents provided with your inquiry, it is our opinion that the above-described pension plan is a private pension within the meaning of section 2(h)(2) of the RRA and section 216.42 of the Board's regulations. Accordingly, benefits under the plan will reduce Burlington Northern Santa Fe Railroad Company employees' supplemental annuities to the extent benefits are based upon employer contributions.

¹ The quotation is from section 4.4 of the plan. It should be noted that section numbers and pagination in the Table of Contents of the plan, and at least some cross-references in the plan, are inaccurate.