



Legal Opinion L-2006-07
April 7, 2006

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TO: Catherine A. Leyser
Director of Assessment and Training

FROM: Steven A. Bartholow
General Counsel

SUBJECT: Supplemental Pension Plan
Providence and Worcester Railroad Company 401(k) Plan

This is in reply to your request for a ruling as to whether the Providence and Worcester Railroad Company 401(k) plan is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act.

Section 216.42(a) of the Board's regulations defines a supplemental pension plan 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 of 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.

As you point out, the pension plan at issue is a written plan, which is communicated to the employees to whom it applies. However, it is not a defined benefit plan, and the funding by employer contributions is discretionary. Therefore, it is not a defined contribution plan either, and does not qualify as 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 not reduce the Providence and Worcester Railroad Company employees' supplemental annuities.