



Legal Opinion L-2003-01
January 21, 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 : Wayne J. Scharnak
Chief, Employer Service and Training Center

FROM : Steven A. Bartholow
General Counsel

SUBJECT: Compensation Credit of CSX "Longevity Bonus" Payments

This is in response to your memorandum dated December 24, 2002, wherein you asked whether a "Longevity Bonus" paid by CSX Transportation Company (CSX) should be treated as creditable compensation under the Railroad Retirement Act. You stated that CSX does not intend to report the payments as creditable compensation, citing Internal Revenue Ruling 58-145 as the basis for its action.

The payments are made pursuant to Article 1, section 1 of an Agreement dated August 20, 2002 between participating carriers¹ and the employees (other than Yardmasters) of such carriers represented by the United Transportation Union to determine if those payments constituted compensation within the meaning of the Railroad Retirement Act. The payments are designated as a "Longevity Bonus" and are payable to individuals who meet the following qualifications:

- 1) an employee must have an employment relation with the carrier in a craft covered by the Agreement on September 1, 2002;
- 2) an employee must have established seniority in train or engine service with a participating carrier on or before October 31, 1985; and
- 3) (i) an employee must have received compensation for active service performed during the period July 1, 2002 through August 31, 2002, or
(ii) an employee was on authorized leave for the entire period, July 1, 2002 through August 31, 2002, for personal illness, on-duty injury, or pursuant to the Family and Medical Leave Act, and return to active service not later than January 1, 2003, or
(iii) an employee was out of service for the entire period, July 1, 2002 through August 31, 2002, due to carrier disciplinary action that is subsequently rescinded or overturned with pay for all time lost.

Section 1(h)(1) of the Railroad Retirement Act (45 U.S.C § 231(h)(1)) provides that compensation means any form of money remuneration paid to an individual for service rendered as an employee. A similar definition is found in the Railroad Unemployment Insurance Act, 45 U.S.C. § 351(i). Regulations issued by the Internal Revenue Service regarding the Railroad Retirement Tax Act (26 CFR 31.3231(e)-1) provides that "compensation" has the same meaning as "wages" under section 3121(a). 26 CFR 31.3121(a)-1(c) provides that wages include bonuses. In addition, the Board's own regulation, 20 CFR 211.2(b)(1) provides that "compensation" includes bonuses.

Previous decisions of this office regarding other special payments made to railroad employees have determined that special payments or bonus payments are compensation. In Legal Opinion L-87-82, the Deputy General Counsel determined that payments made to Conrail employees under section 4024(e) of P.L. 99-50 were compensation. Those payments were based on each employee's pro-rata share of a fund of \$200 million based on the employee's earnings during a specified period divided by all earnings of

¹ The Agreement refers to the "participating carriers listed in Exhibit A". No copy of Exhibit A was provided; nor was it needed for purposes of this legal opinion.



Legal Opinion L-2003-01 January 21, 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>

Conrail agreement employees. In Legal Opinion L-92-1, the Deputy General Counsel also ruled that an Emergency Board award of a lump sum payment of \$2,000 that was payable to “each employee of a railroad who worked during the year preceding the date of the signing of the agreement” was compensation under the Acts.

The “Longevity Bonus” provided for in Article 1, section 1, of the Agreement dated August 20, 2002, is, in my opinion, directly related to service the employee has performed for the carrier in question. The payment is predicated on the employee’s maintaining an employment relationship with the carrier and requires that the employee either be in active service to the employer during the defined period or be in some other status outlined in the Agreement. As such, the “Longevity Bonus” is not distinguishable from the payments ruled upon in the above-cited legal opinions and is, in my opinion, compensation under the Acts administered by the Board.

The revenue ruling, 58-145, relied on by CSX discusses whether income taxes must be withheld from a bonus payment paid by a baseball club to professional baseball players. That revenue ruling states that bonuses that are not predicated on continuing employment, made to new baseball players solely for signing their first contract, do not represent remuneration for services performed and thus are not wages subject to income tax withholding. The ruling points out, however, that payments predicated on continued employment are subject to wage withholding.

In conclusion, the Railroad Retirement and Railroad Unemployment Insurance Acts specifically define compensation as any form of money remuneration paid to an individual for service rendered as an employee. The “Longevity Bonus”, for the reasons set forth above, clearly falls within that definition.