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Supreme Court Finds Injury Award for Lost Wages Is Taxable Compensation under Railroad Retirement Tax Act

A recent decision by the U.S. Supreme Court found that the portion of a damages award attributable to lost wages for a workplace injury is considered to be taxable compensation under the Railroad Retirement Tax Act (RRTA). The decision in *BNSF Railway Co. v. Loos* (No. 17-1042) was released by the Court on March 4, 2019.

Mr. Loos pursued a claim against his then-employer, BNSF, for a workplace injury under the Federal Employers' Liability Act (FELA), a law allowing railroad workers to file suit against their employers for on-the-job injuries. Mr. Loos was awarded damages of \$126,212, of which \$30,000 was attributable to lost wages from BNSF. BNSF indicated that it would withhold railroad retirement taxes from the lost wages portion of the award. Mr. Loos disagreed with this theory of withholding, arguing that, consistent with the RRTA's definition of compensation, the payment must be "for services rendered" in order to be taxable and instead of compensation for services rendered the payment at issue compensated for an injury.

The issue worked its way from the lower courts to the Supreme Court. Oral arguments took place on November 6, 2018, and the Court reached its decision on a 7-2 vote. In reversing the decision of the Circuit Court of Appeals for the Eighth Circuit, the Supreme Court held that the RRTA's definition of compensation includes not simply pay for active service, but also "pay for periods of absence from active service provided there is an employer-employee relationship." Whether the employer chooses to make the payment through a voluntary settlement or is involuntarily made to do so through an award of damages is immaterial so long as the payment for lost wages is provided based on the recipient's status as a service-rendering employee.

The Internal Revenue Service administers the RRTA and, therefore, is the official source for railroad retirement tax information. However, for purposes only of illustrating the Court's decision,

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the following example is provided. In 2019, railroad employers and employees are subject to a railroad retirement tier I payroll tax of 7.65 percent (6.20 percent on earnings up to \$132,900 for retirement, and 1.45 percent on all earnings for Medicare hospital insurance) and a tier II tax of 13.1 percent and 4.9 percent, respectively, on earnings up to \$98,700. (An additional 0.9 percent in hospital insurance taxes, 2.35 percent in total, applies to an individual's income exceeding \$200,000, or \$250,000 for a married couple filing a joint tax return). If a railroad employee with no other earnings in 2019 is awarded \$550,000 due to an on the job injury, of which \$200,000 is attributable to lost wages (both past and future), the employer and employee would be required to pay \$11,139.80 in tier I taxes (\$8,239.80 retirement and \$2,900 Medicare) and \$12,929.70 and \$4,836.30, respectively, in tier II taxes. (The additional Medicare tax would not apply as the award for lost wages did not exceed \$200,000).

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