

August 11, 1999  
L-99-8

TO : Philip H. Arnold  
Chief, Records, Analysis & Systems

FROM: Steven A. Bartholow  
General Counsel

SUBJECT : Pension Plan for Salaried Employees of the Union Pacific Corporation

This is in response to your memorandum dated June 29, 1999, requesting an opinion as to whether the Pension Plan for Salaried Employees of the Union Pacific Corporation (Pension Plan) is a supplemental pension plan within the meaning of section 2(h)(2) of the Railroad Retirement Act. Assuming the Pension Plan is such a supplemental pension plan, you then inquire as to the correct pension rate to be used to reduce the supplemental annuity where an individual elects to be paid under the ALevel Income® option of the Pension Plan.

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 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.

The Pension Plan at issue is a written plan which is communicated to the employees to whom it applies. It covers salaried employees of Union Pacific Corporation and affiliated companies participating in the Pension Plan. Employees covered by an agreement are only covered by the Pension Plan if the agreement specifically provides for such coverage. The Pension Plan is a defined benefit plan and is funded entirely by employer contributions as determined by the plan

actuary which are deposited into a trust fund. Enrollment in the plan is automatic upon the first day of service as a covered employee. The Pension Plan has definite provisions pertaining to contributions, creditable service, vesting, retirement age and benefits and has been approved by the Internal Revenue Service.

On the basis of my review of the documents provided with your inquiry, I concur with your opinion that the above-described pension plan is a private pension within the meaning of ' 2(h)(2) of the RRA and ' 216.42 of the Board's regulations. Consequently, benefits under the Pension Plan will reduce the supplemental annuity to the extent benefits are based upon employer contributions.

I also concur with your opinion as to how to determine the pension rate to be used for the reduction to the supplemental annuity where an individual elects to receive benefits under the ALevel Income® option.

This office has previously determined that an individual who elects a lump sum in lieu of a monthly pension benefit should be treated, for purposes of the reduction under section 2(h)(2), as receiving a monthly benefit. (See Legal Opinions L-66-218 and L-88-49). The ALevel Income® option allows an individual to elect to receive an increased monthly pension until the attainment of either age 60, 62 or 65, whichever age the individual expects to receive social security benefits or an annuity payable under the RRA. Upon attainment of that predetermined age, the monthly pension decreases, regardless of whether the employee has actually started to receive the expected benefits. In the case cited in your memo, an employee was entitled to receive a monthly railroad pension of \$479.65 but elected the ALevel Income® option which allowed him to receive \$1,808.57 until he attained age 60. At that time, his pension was reduced to \$24.79. Consistent with prior opinions from this office, the reduction amount should be \$479.65 - the monthly amount the employee would have received under the plan had he not elected the ALevel Income® option.