

October 8, 1999
L-99-12

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

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Retirement Pension Plan of the Norfolk Southern Corporation and Participating Subsidiary Companies, effective June 1, 1982, and amended to and including May 19, 1999.

This is in response to your memorandum dated August 25, 1999, requesting an opinion as to whether the above-referenced retirement plan (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 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 Plan at issue is a written plan which is communicated to the employees to whom it applies. It covers employees of the Norfolk Southern Corporation and its subsidiaries which have adopted the plan. It is the successor plan to a number of other pension plans itemized in Article I. The 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 Plan has definite provisions pertaining to contributions, creditable service, vesting, retirement age and benefits and has been approved by the Internal Revenue Service. Benefits paid under the Plan are reduced by 70% of any railroad retirement benefit payable, but in computing the amount of railroad retirement benefit any supplemental annuity payable is excluded. See Articles VI. 1. (d) and VI. 3. (a).

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 section 2(h)(2) of the RRA and section 216.42 of the Board's regulations. Consequently, benefits under the Plan will reduce the supplemental annuity to the extent benefits are based upon employer contributions.