



Legal Opinion L-2004-06
March 31, 2004

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

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Dear xxxxxxxxxxxx:

This is in response to your letter of March 8, 2004, regarding a former Conrail employee who is currently receiving an annuity under the Railroad Retirement Act. Your letter inquires whether the employee may continue to receive a disability annuity under the Act after attaining full retirement age, and whether such an individual may continue on the seniority roster of the former railroad employer. You indicate this information will be used to resolve whether the former employee may continue to hold office in the United Transportation Union. I have referred the matter to the General Counsel of the Railroad Retirement Board, who has provided the following general discussion.

The General Counsel advises that an employee annuitant's retention of rights to return to railroad employment is governed by section 2(e)(2) of the Railroad Retirement Act of 1974 as amended (45 U.S.C. § 231a(e)(2)). That section provides in part that annuities awarded under section 2(a)(1) of the Act, including thereby disability annuities under subsection 2(a)(1)(iv) and 2(a)(1)(v) of the Act (45 U.S.C. §§ 231a(a)(1)(iv) and 231a(a)(1)(v)):

* * * shall be paid only if the [employee] applicant shall have relinquished such rights as he may have to return to the service of an employer: Provided, however, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) prior to attaining retirement age (as defined in section 216(1) of the Social Security Act)* * *

The foregoing passage of section 2(e)(2) thus does not require that an individual receiving a disability annuity relinquish his or her right to return to railroad employment prior to attaining full retirement age as it is defined by section 216(1) of the Social Security Act (42 U.S.C. § 416 (1)) on the basis of the employee's year of birth. However, the General Counsel also notes section 5(b) of the Act (45 U.S.C. § 231d(b)) provides that at retirement age, a disability annuitant shall be deemed to have filed an application for an annuity based on age. The General Counsel advises that this means the railroad employee must relinquish rights to railroad employment effective the month the employee attains retirement age.

The General Counsel further advises that section 2(e)(2) also requires the employee to relinquish any rights to railroad employment when the employee's spouse becomes entitled to an annuity, or when the employee becomes entitled to a supplemental annuity:

* * * notwithstanding the provisions of the preceding proviso [regarding disability annuities], * * * an annuity shall be paid to the spouse of an individual [employee] only if such individual shall have satisfied the requirements of this subdivision * * * [by relinquishing any rights to return to the railroad employer]: And provided further, That, notwithstanding the provisions of the first proviso of this subdivision [regarding disability annuities] * * *, a supplemental annuity shall be paid to an individual [employee] only if such individual shall have satisfied the requirements of this subdivision * * * [by relinquishing any rights to return to the railroad employer].

The General Counsel advises that the effect of section 2(e)(2) is therefore to require that an employee who initially is awarded a disability annuity must relinquish his rights to railroad



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employment on the earlier of the time (1) when he becomes entitled to a supplemental annuity; (2) when his wife becomes entitled to a spouse annuity; or (3) the month in which he attains full retirement age as defined for individuals with his birth date, because his annuity converts from disability to full age pursuant to section 5(b) of the Act. No payment of a supplemental annuity or spouse annuity may be made until the employee's right to railroad employment has ended, and payment to a former disability annuitant cannot continue past the month the annuity is converted to payment at full retirement age.

The General Counsel notes that regulations of the Railroad Retirement Board specify how relinquishment of rights is accomplished for benefit entitlement purposes under the Act. In particular, section 216.24(b)(6) of the (20 CFR 216.24(b)(6)) provides that relinquishment of railroad employment rights occurs for railroad retirement benefit entitlement purposes when "The Board gives up that right for the individual, having been authorized to do so by the individual".-3-

In accordance with section 216.24(b)(6) of the regulations, the application for a determination of disability which an employee must file with the Board contains the following statement, set forth below in pertinent part:

RELINQUISHMENT OF RIGHTS BY DISABILITY ANNUITY APPLICANT ONLY

I authorize the RRB to relinquish any rights I may have to return to work for a railroad employer, which will affect the payment of my own or my spouse's annuity. Based on this authorization, my rights will be relinquished at age 65, or at age 60-64 if I become entitled to a supplemental annuity or if my spouse becomes entitled to a spouse's annuity. I understand this authorization remains in effect unless I revoke this authorization in writing or my disability annuity terminates before age 65 or before a spouse's annuity becomes payable. * * * (RRB Form AA-1d(4-95), at Section 10).

The General Counsel notes that if relinquishment of rights is not made by the Board pursuant to the employee's agreement, no supplemental annuity, spouse annuity or age annuity payments may be made. Furthermore, if any payment of a supplemental annuity, spouse annuity, or age annuity after full retirement age is issued without the employee's relinquishment of rights, such payments would be erroneous and subject to recovery. Finally, the General Counsel advises while the Board furnishes notice of relinquishment of rights as authorized by the employee, enforcement of actual amendment and correction of the employer's record of employee seniority rights is not a matter within the Railroad Retirement Board's authority.

I trust that the foregoing discussion will be of assistance to you.

Sincerely,

V. M. Speakman, Jr.
Labor Member