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Director of Retirement Claims

Associate General Counsel

New work deduction provision in survivor cases

In answer to your informal request, my opinion is that in making the work deduction required for a survivor annuity by section 5(1)(1)(ii) of the Railroad Retirement Act, as amended by section 211(o) of Public Law 86-778, 86th Congress, deductions should be made in the annuity of an individual as set forth in item 4 of Associate General Counsel's opinion L-60-381 whether or not the annuity has been increased pursuant to the "social-security-minimum" provision of section 3(e).

The deduction provision in section 5(1)(1)(ii), after its amendment by section 211(o) of Public Law 86-778, is, as it was before the amendment, in terms simply of a deduction from the "individual's annuity or annuities". Nothing in the provision or any related provision suggests that the amount of the deduction, or the months for which the deduction provision requires a complete or partial loss of annuity for the month is to be affected by annuity's payability, either single or as one of a member in a family, under the social-security-minimum provision of section 3(e).

Of course, 110 percent of the amount payable to the family under the Social Security Act for any particular month is required to be paid under section 3(e), with this amount to be recalculated after the work deduction made in the annuity of one or more members of the family. As section 3(e) provides, the annuities of members of a family, who are entitled to receive annuities on the same person's employment for a particular month, are to be increased proportionately. For example, where the family beneficiaries are a widow and two children, and the widow earns enough over \$1,200 in a year to be charged with excess earnings for one or more months in the year equal to her monthly annuity, deduction must be made in her annuity for such month or months of an amount equal to her whole annuity. We cannot limit the deduction to what would have been payable to her under the railroad retirement formula or by just the amount that she would have received under the social security system as a widow, for that would leave something payable to her for the month, a result that is not allowable under the express terms of section 5(1)(1)(ii) as amended (unless the chargeable excess is less than the annuity for the month). But section 3(e)

Director of Retirement Claims

requires that the other members of the employee's family group who are entitled to annuities are not to receive less than 110 percent of the amount that would be payable for the month to all in the employee's family under the Social Security Act. Accordingly, 110 percent of the total amount payable under the Social Security Act in the month to the members of the family (which would not include the mother) would then be payable to such other members of the family as are railroad retirement annuitants (as survivors of the employee), with the minimum to be divided on the basis of increasing the regular railroad retirement annuities proportionately to equal this minimum total. And while the number of months of such deduction may be more or less than would be the case of like excess earnings under the Social Security Act, this is the result of the statutory requirement for paying 110 percent of the social security amount and the differing proportions of the family's payment due each member under the respective systems.

This procedure should, of course, apply to all months in which the working survivor, whether, as in the example given, the widow or some other survivor, is to lose an amount equal to the beneficiary's entire annuity. But to follow that procedure for the final month in which the deduction is to be made and the deduction required is to only a part of the annuity for the month (applying the minimum provision literally by increasing the annuities of all members of the family proportionately, including the annuity of the working survivor) would not be giving full effect to the requirement in section 5(1)(1)(ii) for a deduction, in the working survivor's annuity, equal to the remaining excess earnings. We should consider, however, that section 3(e)'s requirement to pay not less than 110 percent of the amount that would be payable under the social security system is but a requirement for a minimum based on the total social security benefits that would be payable to the family. We can provide that minimum and still give full effect to the requirement to withhold part of an annuity because of chargeable excess earnings by making the required reduction in the beneficiary's annuity for the chargeable month and making payment for the same month to the other family member beneficiaries of the amounts otherwise due them under the minimum provision for months in which no work deduction is chargeable. Since this method of deduction is the only method which carries out the purposes of the work deduction provision and at the same time gives the family as a group all that the "social-security-minimum" provides, it is my opinion that this method should be followed, although the amounts payable for the month to the members of the family may not be, as is otherwise the rule, in exact proportion to the amounts payable to them under the railroad retirement formulas.

151 MFG
David B. Schreiber
Associate General Counsel