

NOV 17 1955

L-55-584
M-162

The Board

The Associate General Counsel

Proposed Amendments to the Railroad Retirement Act.

I submit below, for the Board's consideration, a draft bill which would amend the Railroad Retirement Act in a number of respects. These amendments would not depend upon the enactment of bills proposing to amend the Social Security Act such as H.R. 7225 and H.R. 7770, 84th Congress. In due course I shall submit to the Board a draft bill which would amend the Railroad Retirement Act to the extent the Board deems necessary if H.R. 7225, supra, is enacted, and another draft bill which would do the same with regard to H.R. 7770.

The draft bill below would amend the Railroad Retirement Act by repealing the amendment made to section 5(k)(1) of the Act by Public Law 761, 83rd Congress, 2nd Session (approved September 1, 1954), and would confer jurisdiction upon the Railroad Retirement Board for the making of "disability freeze" determinations for career railroad employees. 1/ This is in accordance with the memorandum from the Secretary of the Board to the Chief Executive Officer et al. dated July 11, 1955, entitled "Board Operations Under the Disability Freeze Provisions of the

1/ See L-55-283, L-55-523, and memorandum from the Director of Retirement Claims to the Board dated October 26, 1955.

Social Security Act". This amendment would be effective for annuities accruing with respect to months after June 1955.

This draft bill also incorporates the Board's instructions, and takes account of the views of the Director of Retirement Claims, with respect to desirable changes in sections 3(f) and 5(f) of the Railroad Retirement Act, dealing with the payment of unpaid accrued annuities and death benefits. 2/

Finally, this draft bill incorporates other amendments to the Railroad Retirement Act which the Board proposed in the Chairman's letter of June 3, 1955, to the Secretary, Department of Health, Education, and Welfare. 3/

A BILL

To amend the Railroad Retirement Act of 1937, as amended, to provide for special disability determinations for railroad employees and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That section 3(e) of the Railroad Retirement Act of 1937, as amended, is amended by adding at the end thereof the following paragraph:

2/ See memorandum from the Secretary of the Board, dated October 27, 1953, memorandum from the Director of Retirement Claims dated November 10, 1953, and all subsequent memoranda on the subject, including the Director's memorandum dated March 31, 1955.

3/ See section 201 of H.R. 7770, 84th Congress, 1st Session; the memorandum of August 16, 1955 from the Chief Executive Assistant to the Chief Executive Officer, entitled "Effect of Proposed Changes in the Old-Age and Survivors Insurance Reporting Procedures on the railroad retirement program"; and the memorandum on the same subject from the Secretary of the Board to me dated August 25, 1955.

"For the purposes of this subsection and the Social Security Act, the Board and the Secretary of Health, Education, and Welfare shall determine, as hereinafter provided, whether or not an employee has a 'period of disability', as defined in section 216(1) of the Social Security Act; and in making such determinations, all the provisions of said section 216(1) shall be applicable, except that:

"(i) an application filed with the Board for an annuity under section 2 of this Act on the basis of disability shall be deemed also an application for a determination of such a period of disability; and such an application filed on or before the date of enactment hereof, other than an application on which an annuity on the basis of disability has been denied, shall, for the purpose of this paragraph, be deemed filed after December 31, 1954 and before July 1957;

"(ii) an application for a determination of such a period of disability filed with the Board by an employee who on the date of such filing will have less than ten years of service (unless he will have been awarded an annuity under this Act) shall be transferred to, and be deemed filed on such date with, the Secretary of Health, Education, and Welfare for determination of such a period; but if an application for such a determination is filed with the Board by any other employee, or an employee who will have been awarded an annuity under this Act, the Board shall make the determination of such a period;

"(iii) an application for a determination of such a period of disability filed with such Secretary by an employee who on the

date of such filing will have ten or more years of service, shall be transferred to, and be deemed filed on such date with, the Board for determination of such a period;

"(iv) the determinations required to be made by the Board pursuant to this paragraph shall be made on the basis of (a) records in the possession of the Board (including but not limited to records of evidence concerning a claim for an annuity under section 2 of this Act on the basis of disability, or, notwithstanding the provisions of section 12(a) of the Railroad Unemployment Insurance Act, or other provision of law, a claim for benefits for days of sickness under the Railroad Unemployment Insurance Act), (b) evidence otherwise obtained by the Board, or (c) records maintained by an employer (whether or not an employer covered by this Act), pertaining to the employee with respect to whom such determination is made. In determining whether or not the employee meets the requirements of clause (A) or (B) or paragraph (2) of section 216(1) of the Social Security Act, such employee's employment as an 'employee' after 1936 shall, for the purpose of such requirements, be considered 'employment', as defined in the Social Security Act, and the number of such employee's quarters of coverage with respect to such employment, except with respect to the calendar years in which the thirteen-quarter period, or the forty-quarter period, referred to in paragraph (3) of said section 216(1), begins or ends, shall be determined by applying

the quarters of coverage table in section 5(1)(4) of this Act. For the purpose of determining the number of quarters of coverage in any calendar year in which such a thirteen-quarter period, or forty-quarter period, begins or ends, the compensation paid to an employee in any such calendar year shall be deemed 'wages', as defined in the Social Security Act, and presumed to have been paid in equal proportions with respect to all months in which the employee will have been in service as an employee during such calendar year. The procedure for determining quarters of coverage provided in the next preceding sentence shall be used also for determining quarters of coverage in any calendar year within the thirteen-quarter period, or the forty-quarter period, hereinabove described, if the number of quarters of coverage determined for any such calendar year by the use of the table in section 5(1)(4) of the Railroad Retirement Act is insufficient to meet the requirements of clause (A) or (B) of paragraph (2) of said section 216(1) of the Social Security Act; and

(v) the determinations required to be made by the Secretary of Health, Education, and Welfare pursuant to this paragraph shall be made in accordance with sections 216(1) and 221 of the Social Security Act; and if the employee with respect to whom the determination is made does not otherwise meet the requirements of clause (A) or (B) of paragraph (2) of said section 216(1), such employee's employment after 1936 as an 'employee' under the Railroad Retirement Act shall, for

purposes of such requirements, be considered 'employment', as defined in the Social Security Act, and the number of such employee's quarters of coverage with respect to such employment, except with respect to the calendar years in which the thirteen-quarter period, or the forty-quarter period, referred to in paragraph (3) of said section 216(1), begins or ends, shall be determined by applying the quarters of coverage table in section 5(1)(4) of this Act. For the purpose of determining the number of quarters of coverage in any calendar year in which such a thirteen-quarter period, or forty-quarter period, begins or ends, the compensation paid to an employee in any such calendar year shall be deemed to be 'wages', as defined in the Social Security Act, and presumed to have been paid in equal proportions with respect to all months in which the employee will have been in service as an employee during such calendar year. The procedure for determining quarters of coverage provided in the next preceding sentence shall be used also for determining quarters of coverage in any calendar year within the thirteen-quarter period, or the forty-quarter period, hereinabove described, if the number of quarters of coverage determined for any such calendar year by the use of the table in section 5(1)(4) of the Railroad Retirement Act is insufficient to meet the requirements of clause (A) or (B) of paragraph (2) of said section 216(1) of the Social Security Act.

All such determinations made by the Board and the Secretary, respectively, as provided in this paragraph, shall be conclusive for all purposes of this subsection and the Social Security Act, as the case may be, subject to the

provisions of section 5(k)(3) of this Act relating to certified reports made pursuant to that section; and for the purpose of section 11 of this Act, such determinations by the Board shall be deemed final decisions of the Board determining the rights of persons under this Act. The provisions of this paragraph shall be effective only with respect to individuals who have not died before July 1, 1955, and shall be effective with respect to annuities for months after June 1955."

Sec. 2. Section 3(f) of the Railroad Retirement Act of 1937, as amended, is amended to read as follows:

"(f)(1) Annuities under section 2(a) which will have become due to an employee but which will not have been paid at the time of such employee's death shall be payable to the person, if any, determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of such employee, and to the extent that he or they will not have been reimbursed under the provisions of section 5(f)(1) for having paid such expenses. If there be no person or persons so entitled, or if the total of such annuities exceeds the amount payable to such person or persons under this paragraph, such total, or the remainder thereof,

as the case may be, shall be paid as provided in the last sentence of paragraph (2) of this subsection, as if such unpaid annuities were insurance annuities due under section 5 to a survivor of an employee but unpaid at the time of such survivor's death.

"(2) Insurance annuities under section 5 which will have become due to a survivor of an employee but will not have been paid at the time of such survivor's death shall be payable to the person, if any, determined by the Board to be such employee's widow or widower and to have been living with such employee at the time of the employee's death and who will not have died before receiving payment of such annuities. If there be no such widow or widower, such annuities shall be payable to the children, grandchildren, parents, or brothers and sisters of the deceased employee in the same manner as if such unpaid annuities were a lump sum payable under section 5(f)(2). 4/

"(3) Annuities under section 2(e) which will have become due to a spouse of an employee but which will not have been paid at the time of such spouse's death shall be payable to the employee from whose employment such spouse's

4/ Note that no provision is made for payment to the employee's estate (as provided in section 5(f)(2) for the payment of the lump sum) in the absence of the last-named relatives.

Note also that no provision is made in this paragraph for applying the unpaid survivor insurance annuities toward the reimbursement of burial expenses.

annuity derived and who will not have died before receiving payment of such annuities. If there be no such employee, such annuities shall be paid as provided in the last two sentences of paragraph (1) of this subsection as if such annuities were annuities due under section 2(a) to an employee but unpaid at the time of such employee's death.

"(4) Applications for accrued and unpaid annuities provided for in paragraphs (1), (2) and (3) of this subsection shall be filed prior to the expiration of two years after the death of the person to whom such annuities were originally due.

"(5) For the purposes of this subsection and of paragraphs (1) and (2) of section 5(f) of this Act, a widow or widower of an employee shall be deemed to have been living with the employee at the time of the employee's death if the conditions set forth in section 216(h)(2) or (3), whichever is applicable, of the Social Security Act are fulfilled."

Sec. 3. Section 4(k) of the Railroad Retirement Act of 1937, as amended, is amended by striking the phrase "by the individual who rendered such military service" and by striking the words "six months prior to the date on which such claim for credit for military service was filed with the Board nor before".

Sec. 4. Section 4(n) of the Railroad Retirement Act of 1937, as amended, is amended by striking out the term "subsection 2(a) of section 2(a)", and by substituting in lieu thereof the term "subsection (a) 3 of section 2".

Sec. 5. Paragraph (1) of section 5(f) of the Railroad Retirement Act of 1937, as amended, is amended by striking the first three sentences thereof and by substituting in lieu thereof the following:

"(f) Lump-sum Payment.-- (1) Upon the death, after the month in which this Act is enacted, of a completely or partially insured employee who will have died leaving no widow, widower, child or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, a lump sum of ten times the employee's basic amount shall be payable to the person, if any, determined by the Board to be the widow or widower of the deceased employee and to have been living with such employee at the time of such employee's death and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of the burial of such deceased employee."

The said paragraph (1) of section 5(f) is further amended by striking from the fourth sentence thereof the words "widow, widower, child, or parent" and by substituting in lieu thereof the words "widow or widower"; and by striking from said fourth sentence all the language beginning with the words "a payment to any then surviving widow" and by substituting in lieu thereof the following: "a payment equal to the amount by which such lump sum exceeds such annuities so accrued after

such deductions shall then nevertheless be made under this paragraph to the following person (or if more than one they shall share equally) in the following order of preference: the widow, widower, child or parent, of the employee, then entitled to a survivor annuity under this section." 4a/

Sec. 6. Paragraph (2) of section 5(f) of the Railroad Retirement Act of 1937, as amended, is amended by striking therefrom the language "person or persons in the order provided in paragraph (1) of this subsection, or in the absence of such person or persons, to his or her estate," and by substituting in lieu thereof the following: "following person (or if more than one they shall share equally) whose relationship to the deceased employee will have been determined by the Board and who will not have died before receiving payment of the lump sum provided for in this paragraph: the widow or widower of the deceased employee who was living with such employee at the time of such employee's death; or, if there be no such widow or widower, to any child or children of such employee; or, if there be no such widow, widower or child, to any grandchild or grandchildren of such employee; or, if there be no such widow, widower, child or grandchild, to any parent or parents of such employee; or, if there be no such widow, widower, child, grandchild, or parent, to such employee's brother or sister; or, if there be no such widow, widower, child, grandchild, parent, brother or sister, to the estate of such employee,".

Sec. 7. Paragraph (1) of section 5(k) of the Railroad Retirement Act of 1937, as amended, is amended by striking out "and for the

4a/ Note that no provision is made here for payment to others if the beneficiary dies before receiving payment.

purposes of section 203 and section 216(1)(3) of that Act" and by inserting in lieu thereof "and for the purposes of section 203 of that Act". 5/

Sec. 8. Paragraph (3) of section 5(k) of the said Railroad Retirement Act of 1937, as amended, is amended by inserting in the first sentence after the phrase "this section" the following: ", section 3(e) of this Act,". 6/

Sec. 9. Paragraph (6) of section 5(1) of the Railroad Retirement Act of 1937, as amended, is amended by striking therefrom the two parenthetical expressions and by inserting at the end thereof the following sentence: "Wages, as defined in this paragraph, shall be credited for the purposes of this section in the manner and to the extent credited for corresponding purposes of the Social Security Act."

Sec. 10. Subparagraph (1) of paragraph (7) of section 5(1) of the Railroad Retirement Act of 1937, as amended, is amended by inserting after the word "or" at the end of said subparagraph the following: "he would be fully insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term 'employment' as defined in that Act; or".

Sec. 11. Paragraph (8) of section 5(1) of the Railroad Retirement Act of 1937, as amended, is amended by changing the period at the end thereof to a semicolon and by inserting thereafter the following: "or he would be currently insured under the Social Security Act if his service as an employee after December 31, 1936, were included in the term

5/ This amendment is a part of the disability freeze amendments proposed in section 1.

6/ This amendment is a part of the disability freeze amendments proposed in section 1.

'employment' as defined in that Act."

Sec. 12. Paragraph (9) of section 5(1) of the Railroad Retirement Act of 1937, as amended, is amended by striking from clauses (A) and (B) thereof the words "quarter in which he will have died" and by substituting in lieu thereof, in each instance, the words "employee's closing date"; by inserting the word "And" before the second proviso thereof; by changing the colon before the last proviso thereof to a period; by striking therefrom the last proviso and by substituting in lieu thereof the following: "An employee's 'closing date' shall mean (1) the first day of the first calendar year in which such employee both had attained age 65 and would be completely insured had he died; or (2) the first day of the calendar year in which such employee died; or (3) the first day of the calendar year following the date of such employee's death, whichever would produce the highest 'average monthly remuneration' as herein defined."

Sec. 13. The amendments made by sections 2 and 6 of this Act shall be effective with respect to deaths occurring on or after the date of enactment hereof. The amendments made by section 3 of this Act shall be effective as of February 1, 1954, with respect to annuities awarded, after the enactment hereof, under section 2 of the Railroad Retirement Act of 1937. The amendments made by sections 7 and 8 of this Act shall be effective only with respect to individuals who will not have died before July 1, 1955, and shall be effective with respect to annuities for months after June 1955. The amendments made by sections 9, 10, 11 and 12 of this Act shall be effective, in the case of benefits under section 5(f)(1) of the said Railroad Retirement Act, only with respect to deaths

occurring on or after the date of enactment hereof and, in the case of insurance annuities under section 5 of the said Railroad Retirement Act, only with respect to annuities deriving from applications filed on or after such date, 1/ including annuities otherwise accruing for months before such date pursuant to section 5(j) of the said Railroad Retirement Act, except that the amendment made by section 18 of this Act shall not apply with respect to the death of an employee on the basis of whose service monthly benefits had been awarded, before the date of enactment hereof, under the Social Security Act.

David B. Schroeder
Associate General Counsel

CC: Secretary of the Board
Chief Executive Officer
Director of Research
Director of Retirement Claims
Director of Wage & Service Records
Chief Administrative Analyst

DBS:j1

1/ Note that there is no provision against applying this amendment to applications filed before such date and re-filed after such date.