

127685
Mr. James L. Cowen
Eugene M. Klein and Associates
Superior Building
Cleveland, Ohio 44114

OCT 25 1977
L 77 - 610

Dear Jim:

Pursuant to the requests contained in your letter of October 18, 1977, I am enclosing copies of the following: (1) General Counsel's opinion L-75-104, which concerns the applicability of the "rounding" provision contained in section 1(f)(1) of the Railroad Retirement Act in determining years of service for purposes of annuity computations; (2) General Counsel's opinion L-77-256, which holds that "windfall" amounts are not payable to nondependent husbands and widowers whose railroad retirement annuities are reduced because they are receiving social security husbands' or widowers' benefits pursuant to the Supreme Court's holdings that the dependency requirements imposed on husbands and widowers under the Social Security Act are unconstitutional; (3) General Counsel's opinion L-77-369, which holds that, in view of the Supreme Court's decisions in Califano v. Goldfarb and Kelina v. Railroad Retirement Board, the Board may no longer apply the dependency requirements imposed by the Railroad Retirement Act in determining the annuity entitlement of husbands and widowers, and further holds that the annuities of nondependent husbands and widowers may begin no earlier than March 1, 1977; (4) General Counsel's opinion L-77-373, which concerns the payment of "windfall" amounts to nondependent husbands and widowers of female railroad retirement employee annuitants; and (5) General Counsel's opinion L-77-299, which concerns the windfall entitlement of disability annuitants under the 1937 Act who subsequently recovered from their disabilities. As you know, additional questions have been raised with regard to cases involving disability annuitants who recover from their disabilities and subsequently become entitled to age annuities; however, an opinion on these questions has not yet been issued.

As you stated in your letter, it has been concluded that a "windfall" amount is not payable under the Railroad Retirement Act until such time as the annuitant satisfies the minimum eligibility conditions, other than the filing of an application, for the type of social security benefit upon which the windfall entitlement is based. This

Mr. James L. Cowen

office has not, however, issued a formal opinion so holding. In a case where a nondisabled individual begins receiving a railroad retirement annuity prior to the time he/she attains age 62, cost-of-living increases to the windfall amount will not be made after his/her annuity beginning date, even though he/she will not begin receiving the windfall amount until some later date. This result is mandated by the language of section 3(h)(5) of the Railroad Retirement Act.

No formal legal opinion has been issued regarding the point at which an age reduction is made in a case where the annuitant is also receiving a social security benefit. Section 2(a)(1) of the Railroad Retirement Act provides that an individual who meets the eligibility conditions set forth therein shall be entitled to an annuity in the amount provided under section 3 and further provides that this annuity shall be reduced if the individual is under age 65 and has completed less than 30 years of service. Thus, it is clear that the annuity amount as computed under section 3 is the amount which must be reduced for age. The reduction due to receipt of a social security benefit is provided in section 3 as a part of the process of computing the annuity amount payable. It follows, therefore, that the social security benefit reduction will be made in the process of determining the total annuity amount which becomes subject to any age reduction.

I trust that the foregoing provides the information which you have requested.

Very truly yours,

Dale G. Zimmerman
General Counsel

Enclosures (5)

L-75-104
L-77-256
L-77-369
L-77-373
L-77-299

DGZ:cs