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Director of Retirement Claims

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General Counsel

Maximum spouse's annuity

This is in reply to your memorandum of April 24, 1978, regarding the computation of the maximum spouse's annuity under section 4(b) of the Railroad Retirement Act of 1974. That section provides in pertinent part that if a spouse's annuity under the Railroad Retirement Act exceeds

"* * * 110 per centum of an amount equal to the maximum amount which could be paid to anyone, with respect to such month, as a wife's insurance benefit under section 202(b) of the Social Security Act, the amount of the [spouse's] annuity * * * under this subsection shall be reduced until * * * such annuity * * * equals 110 per centum of such amount. * * *"

There is no useful legislative history concerning this provision, although it should be noted that the Report of the Committee on Labor and Public Welfare of the United States Senate on the Restructuring of the Railroad Retirement System (S. Rep. No. 1163, 93d Cong., 2d Sess. 41 (1974)) states that the "spouse maximum provision specifies that the maximum payable under the Act to a spouse cannot exceed 110 percent of the maximum possible wife's insurance benefit payable to any wife under the Social Security Act." (Emphasis in original.) The characterization contained in the Report which refers to the "maximum possible wife's insurance benefit" supports the clear meaning of section 4(b) which refers to a wife's insurance benefit which "could be payable."

It is quite clear therefore that in order to determine the maximum spouse's annuity under the Railroad Retirement Act a hypothetical situation under the Social Security Act must be

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used and it is immaterial that there may at present be no actual such situation under that Act. The improbability of the hypothetical situation is also immaterial. It is therefore impermissible to freeze the maximum at a certain level based on the unlikelihood of continued employment in a particular case.

The hypothetical situation which must be used is that which is productive of the highest wife's benefit. If that hypothetical is later superseded by another one which would produce a higher benefit, then that second hypothetical must be used at that time. Therefore, in response to your inquiry, if all of the hypothetical situations you describe could arise under the Social Security Act, then the one productive of the highest wife's benefit must be used to determine the maximum spouse's annuity; that is, unless there could arise a situation, not heretofore considered under the Social Security Act, which could produce a higher benefit. If the hypothetical at present productive of the highest wife's benefit should in the future be superseded by a hypothetical which could produce a higher wife's benefit, then the second hypothetical must be used.

Dale G. Zimmerman

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