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Director of Data Processing and Accounts

General Counsel

Sickness benefits - The Texas Mexican Railway Company - Rule 48 of their Agreement with the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees effective June 1, 1972

This is in response to your memorandum of September 19, 1977, in which you request an opinion as to whether the sick leave provisions of the above Rule would qualify as a "plan" under section 1(h)(6)(vi) of the Railroad Retirement Act of 1974 (45 U.S.C. § 231(h)(6)(vi)).

Rule 48 covers clerical, office, station and storehouse employees represented by the above union. The Rule provides for sick leave allowances in accordance with a schedule provided in a national agreement. Under the Rule an employee continues to receive his full pay on days he is absent due to sickness up to the amount of his accumulated sick leave. An employee may also increase his sick leave by having his unused vacation allowance for the current year changed to sick leave when his sick leave allowance has been exhausted.

In light of the above I am of the opinion that the sick leave provisions of Rule 48 constitutes a "plan" within the meaning of the above-cited section of the Railroad Retirement Act, and, therefore, benefits paid on days of sick leave, and on days of vacation allowance which have been changed to sick leave are excludable from compensation under the Act, if paid in fact on account of bona fide sickness or injury.

Dale G. Zimmerman

TWS:das