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Mr. Squire

Mr. Schreiber

Your inquiry of last Friday with regard to the application of section 3(e) of the Railroad Retirement Act

Your inquiry concerned the application of section 3(e) to the widow of a railroad employee who was herself an employee before 1937 and entitled to a retirement annuity on that basis, in addition to a widow's annuity based on her husband's employment. In that case, applying the social security minimum provision of section 3(e) to the widow's annuity alone would have resulted in an increase in that annuity, but treating the provision as applying to the sum of the annuities of the widow, that is, comparing what the widow would receive under the Railroad Retirement Act in her dual capacity as employee and as widow of an employee with what she would receive under the Social Security Act the consequence would be, in the particular case, that this sum would not be increased.

The conclusion that section 3(e) is to be treated as applying to the sum of the two annuities does not derive solely from the broad purpose of section 3(e) without taking account of language.^{1/}

In the case given, it is true that the widow had no employment of her own after December 31, 1936, which circumstance might suggest, since the determination is of the amount payable if the employee's service "after December 31, 1936, were included", as social security employment, that the provision has no application to the widow's annuity as an employee herself, although it would as to the survivor annuity derived from her husband's employment. But the provision, as indicated, applies when

^{1/} The provision (section 3(e)) for the over-all minimum applies "if for an entire month an annuity accrues and is payable under this Act" and requires that "the annuity to which an employee is entitled under this Act together with his or her spouse's annuity, if any, or the total of survivor annuities under this Act deriving from the same employee, is less than the amount, or the additional amount which would have been payable to all persons for such month under the Social Security Act [deeming [its] . . .] if such employee's service as an employee after December 31, 1936, were included in the term 'employment' as defined in that Act such annuity or annuities, shall be increased proportionately to a total of such amount or such additional amount".

Mr. Squire

"an annuity accrues and is payable", without limiting the annuity to either the employee annuity or the survivor's annuity, and, obviously, from its context and the other language of the provision, the annuity could be either. A retirement annuity to which the minimum applies could be based, of course, at least in part on service before 1937 as is obvious from the provision itself which refers only to an "annuity" and in no way suggests, and certainly does not compel the conclusion, that only such part of the annuity as is based on service after 1936 is to be measured against the amount of the social security benefit which would be payable on the basis of this later service.^{2/}

With the language susceptible to the view that it is the whole annuity which is to be measured against the amount which would be payable under the Social Security Act, we may very well determine the Congressional meaning by considering the language of the provision in the light of other relevant considerations such as its legislative history and general purpose, and including, of course, the fact that the benefit formula under the Social Security Act is weighted so as to provide credit, in effect, for prior service. In such circumstances, we are entirely justified in concluding that the provision was intended to assure only that railroad employees and their survivors were not to lose benefits by reason of the exclusion of their railroad employment from coverage by the Social Security Act, and so to consider in the computation of the minimum benefit that annuity which is based altogether on prior service. In the light of that expression and understanding of the Congressional intent we should determine what the widow would receive under the provision in her double capacity as employee and survivor, by comparing the total the Railroad Retirement Act has provided her independently of the social security system with the total of what she could receive under the latter system in both capacities. Under that system, either by reason of the provisions for the widow's benefit itself (section 202(e)(1)), or the restriction on simultaneous entitlement to benefits (section 202(k)(3)), the most that would be paid would be an amount equal to the higher of the two benefits. Accordingly, while under the social security system nothing is deducted from the widow's benefit because of entitlement to a retirement annuity under the Railroad Retirement Act, the widow is an employee as regards her retirement annuity so that it must be

^{2/} The illustration I gave you was of a retirement annuity in the amount of \$60, \$20 of which was attributable to prior service and the annuitant's subsequent service would have entitled him to \$70 a month under the Social Security Act. In such case we increase the annuity by \$10 to \$70, and not by \$30 to \$90.

Mr. Squire

taken into account in the computation. As pointed out earlier the circumstance that the annuity is based altogether on prior service does not affect such a computation. Thus, the case does not at all stand for the proposition that we may rely solely on the broad purpose of section 3(e) in determining the limits of the Board's authority.

An illustration of how interpretation must be confined so as not to be inconsistent with the statutory language (except where absurdity would otherwise result) is the ruling that where an employee leaves but one survivor the over-all social security minimum may not be used to provide the survivor with an annuity for a month in which by reason of a work deduction or like restriction no annuity would be payable under the Railroad Retirement Act although no such deduction or restriction would apply to the corresponding benefit payable under the Social Security Act. Such a consequence follows, it was held, since the language of the over-all minimum provisions specifies that it is to apply "if for any . . . month" an "annuity accrues and is payable", and in the case mentioned this literal condition would not be satisfied.

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