

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

Memorandum

MAR 09 1990

TO : Director of Field Service

L-90-32

FROM : Deputy General Counsel

SUBJECT: Atchinson, Topeka and Santa Fe Railway Company
Transfer Allowances

This is in response to the memorandum of December 27, 1989, concerning the treatment under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA) of a lump sum transfer allowance received by an employee who transfers in order to receive the allowance but resigns immediately upon arrival at his new place of employment or shortly thereafter.

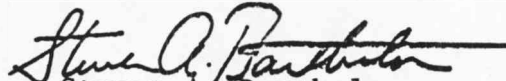
Mr. Bergeron of your staff has indicated that this question arose in regard to certain employees of the Atchison, Topeka and Santa Fe Railway Company who took part in a relocation program which resulted from the closing of a terminal. The employees in question took a transfer allowance in lieu of reimbursement for moving expenses. The employees reported to the new location, but then resigned either immediately or shortly thereafter.

In Legal Opinion L-89-65 I held that where an employee accepts a lump sum transfer allowance but fails to transfer, thus resulting in his dismissal, the transfer allowance should be treated as a separation allowance under the RRA and RUIA. In that case, although the employer did not intend that the payment be a separation allowance at time payment was made, the fact that the employees had no intention of relocating and that the employer made no attempt to recover the allowance, presented a sufficient basis to conclude that the allowances, in actuality, constituted separation allowances.

With respect to the present case, the employees actually transferred and thus fulfilled the requirement to receive the allowance. Accordingly, in the absence of clear and convincing

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evidence that the employee had no intention to relocate, it would be my opinion that the payment should be considered as a relocation allowance creditable to the period for which it was paid, i.e. the month in which the transfer occurred. If, however, there exists clear and convincing evidence that the employer had no intention to relocate, it is my opinion that the allowance may be treated as a separation allowance.


Steven A. Bartholow

cc: Director of Research and Employee Accounts
Director of Retirement Claims
Director of Unemployment and Sickness Insurance

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