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Chief Actuary

Associate General Counsel

Appropriations for auxiliary benefits based in whole or
in part on prior military service

In reply to your request of November 17, 1959, my opinions
on the various questions you presented are as follows:

1. The reimbursement provisions of section 4(n) with regard
to the crediting of military service before 1937 ("prior military
service") are limited to the annuities of employees. They do not apply
to other monthly benefits.

The Act provides (section 4(n)) that the "additional cost
of crediting military service rendered prior to January 1, 1937 [for
which appropriations are authorized], shall be deemed to be the differ-
ence between the actuarial value of such annuity based in part on mili-
tary service and the actuarial value of the annuity which would be
payable to the same individual without regard to military service".
That provision by itself may suggest that the benefits to be taken into
account in determining the amount due the railroad retirement system
includes not only the annuity to the employee himself but those annuities
(not lump sums) deriving from the employee's service. But the provision
is to be read in the light of the very next sentence which specifies
that "whenever the annuity based in part on military service begins to
accrue before age 60, the annuity without regard to military service
shall be valued on the assumption of deferment to age 60 . . .".

Obviously, the provision requiring treatment of an
annuity as if deferred to age 60 contemplates that children's annuities
are not to be counted in the calculation since all children's annuities
(except in the rare instance of a child entitled to a disabled child's
benefit) must begin before age 60 (generally before age 18) and generally
(except in disability cases) must end long before that age upon the
beneficiary's reaching age 18 (or earlier, if the child marries). A
somewhat similar consideration applies to the widow entitled before age
60 to an annuity because of having a child in her care. Since the pro-
vision for reimbursement for prior military service was enacted in this
form in 1942 (Public Law 520, 77th Congress, section 8), years before
the inclusion in the system of monthly benefits to wives (1951) and

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surviving dependents (1946) (or at a time when annuities were provided only for employees), and considering the clear non-inclusion of provision for counting children's benefits in the calculation and the obvious inapplicability of the provision in many widows' cases, the only reasonable conclusion is that it was always the Congressional intention not to take account of annuities, other than those of the employees themselves, in authorizing reimbursement of some kind of the cost of crediting the employee's prior military service. The legislative history contains nothing to the contrary except for the indication of providing in a general way for reimbursement for crediting this prior military service.

2. Section 4(n) of the Act specifies, as set forth in the answer to question 1, that the amount of appropriation authorized for "the additional cost of crediting" prior military service "shall be deemed to be the difference between the actuarial value of each annuity based in part on military service and the actuarial value of the annuity which would be payable to the same individual without regard to military service" (emphasis supplied). In view of this explicit direction for calculating the cost of crediting the prior military service and since the statute does not otherwise contain any provision with regard to charging the cost of allowing lump sums based on prior military service (and the legislative history contains nothing on it), in my opinion these sums are not to be counted for appropriation purposes.

3, 4, 5. In view of the answers to question 1, questions 3, 4, and 5 need not be answered.

6. The answer is "No" to your informal request (not included in your formal memorandum) whether or not the Board's obtaining reimbursement from the social security system through the "financial interchange" for crediting "prior" or "subsequent" military service in benefit payments, annuity and lump sum, to employees, their wives, and their survivors, should result in a reduction in the military service appropriations to the Board.

Section 4(n) of the Railroad Retirement Act has, as was explained in the answer to question 1, most explicitly set forth the manner of calculating the amount of the appropriation from general funds for reimbursing the Railroad Retirement Account for crediting "prior" military service in benefit payments to employees, their wives, and their survivors. The section has explicitly, through providing for the calculation on an employer-employee tax basis (even with respect to the time after 1956 when the "Hardy bill's" provisions apply), established the manner of calculating the reimbursing appropriation for crediting "subsequent" military service. The only reference to the "financial interchange" in the provisions for these calculations (for both "prior"

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and "subsequent" military service) are provisions added by the "Hardy bill" amendments of 1956. These amendments specify that in the "financial interchange" the railroad retirement system should be credited with having paid the employer and employee social security taxes which by the amendments are imposed on military service and which by the amendments must be deducted from the amount appropriated to the Railroad Retirement Account for military service credit. The implication from the spelling out of these provisions is that only insofar as these provisions have application does either the "financial interchange" or the military service appropriation to the Railroad Retirement Account have any effect on the other. Accordingly, in my opinion, the Board's obtaining reimbursement from the social security system for allowing military service credit in paying railroad retirement benefits should not affect the amount of appropriation otherwise due for allowing such credit.

David B. Schreiber
Associate General Counsel

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