

*Transfer of Pensioners to Board Jurisdiction 37-1-546*  
*Pensioners, Transfer to Board Jurisdiction 37 R.R. 29*  
*Pension Award for Injury*  
*Pension, Awarded as result of*  
*Court Action*  
*L-37-292*  
*May 18, 1937.*

Mr. Latimer

*Pensions Awarded Only by Reason of Employment*

Mr. Schreiber

*Pensions, General Discussion*

Questions relating to transfer of pensioners from employers' pension and gratuity rolls to the jurisdiction of the Railroad Retirement Board.

Reference is made to the questions presented by Mr. E. M. Fitch's memorandum of May 14, 1937, dealing with the above subject:

**Question**

No. 1. "Can pensions awarded in settlement of a workmen's compensation or employer's liability plan properly be transferred to the Railroad Retirement Board? Is this true whether or not pension is paid as a result of a court or Workmen's Compensation Commission order? Should pensions awarded for disability be checked for this?"

**Opinion:**

A pension awarded in settlement of an employer's liability under a Workmen's Compensation or employer's liability law, whether awarded as a result of a Court order, or an order of a Workmen's Compensation Commission, is not a pension or gratuity within the meaning of Section 6 which states in part that: "Each person then on the pension or gratuity roll of an employer by reason of his employment \*\*\*\*\*shall be paid \*\*\*\*\* a pension equal in amount to the pension or gratuity granted to him by the employer." A payment made under such a settlement or award is not a "pension or gratuity" granted "by reason of his employment", but is a pension granted by reason of the employer's liability for injuries incurred by an employee. Such payments would have to be made by the employer irrespective of his maintenance of a pension system. The proposed amendment clearly is not intended to relieve the employer of his liabilities arising out of injuries to persons in his employ, but only to relieve the employer of his obligations existing by reason of his employees' years of service. However, pensions granted for disability should be checked only in cases where the pensioner is receiving a pension to which he is not entitled or which is in excess of that to which he is entitled under the general pension plan in effect. I recommend that the following supplemental instructions to form LQ-4 be sent to all employers.

Supplemental Instruction to Form LQ-4:

Form LQ-4 should not be completed with respect to any pensioner who is receiving a pension in settlement of any Court or Workmen's Compensation Commission award or in settlement of any claim for personal injuries.

Employers are instructed to withdraw all forms LQ-4 already submitted to the Board covering any such cases.

Question

No. 2. "If the wife of an employee or official has been placed on the railroad pension rolls as a special case, is this pension properly transferable to the Railroad Retirement Board?"

Opinion: Only such person who is "on the pension or gratuity roll of an employer by reason of his employment" is to be paid a pension under this Section. The wife of an employee or official is not on the pension or gratuity roll by reason of her employment, but by reason of some other person's employment. The Board, therefore, has no authority to pay any pensions to such persons.

Question No. 3. "If a pension has been awarded in a special case which is considerably in excess of what the pension formula would produce, should the higher amount be paid?"

Opinion: Section 6 states, in part, that a pensioner "shall be paid \*\*\*\*\* a pension equal in amount to the pension or gratuity granted to him by the employer without diminution by reason of general reduction or readjustment made subsequent to December 31, 1930." This language makes no distinction between a pension or gratuity granted as a special case and one granted under a general plan. The Section requires the Board to pay an amount equal to the pension or gratuity granted, irrespective of the basis on which it was granted, subject, of course, to the provisions relating to general reduction or readjustment and the maximum of \$120.00. \*

Question

No. 4. "If the pension formula has been changed since December 31, 1930, so that the average monthly compensation is the division of payroll earnings in the last ten years by 120 instead of by the months of net service, is this a general reduction in the amount of pensions as contemplated by the proposed amendment? Such a change it should be noted would apply only to new pensions and not to old ones."

\* except for cases discussed in Question 1.

Opinion

to No. 4. Section 6 refers not only to diminution by reason of a "general reduction" but also to diminution by reason of a general "readjustment". A change in the pension plan such as that described in this question might cause a reduction in some of the pensions but not in others. Such a change would be "general" although not affecting all to the same extent, for the reason that it is applicable in the same manner to all who come within its terms. The fact that this readjustment does not apply to pensions granted prior thereto does not render it less general since it does apply to all pensions granted thereafter, in the same manner, but not necessarily to the same extent. A pension which is less than it would have been had there been no such change in the plan subsequent to December 31, 1930, is covered by this Section, and the Board is required to pay the amount computed on the basis of the plan as of December 31, 1930.

Question

No. 5.

"If a general reduction in pensions has occurred since December 31, 1930, such that regular pensioners must have their pensions increased by the amount of the reduction, should special case pensions, the amount of whose pension has been determined after the date of the general reduction, likewise have the amount of their pensions increased? It is here assumed that new pensions granted after a general reduction and computed in accordance with the reduction rather than with the original formula should be increased to provide the amount contemplated by the original formula. Is this true?"

Opinion:

A pension granted as a special case subsequent to a general reduction or readjustment made after December 31, 1930, should not be increased under this section for the reason that there is no way of determining to what extent, if any, such special pension has been affected by the general reduction or readjustment. However, pensions granted under the regular plan, subsequent to a general reduction or readjustment made after December 31, 1930, should be paid on the basis of the plan in effect on December 31, 1930, because they are less than they would have been had there been no such general reduction or readjustment, and the amount of the diminution can be ascertained.

Question

No. 6.

"Will it be necessary to check for employees in the joint service of two unaffiliated railroad companies, both with pension plans? Some pension plans provide that pension privileges may be extended to such employees with payments based upon a proportionate amount of service to and earnings received from the company granting such a privilege. The danger here is that two checks may go to the same employee totalling more than \$120."

**Opinion**

**to No. 6.** Under the amendatory Act a person on the pension or gratuity roll of an employer is to be paid an amount equal to the pension or gratuity granted to him by such employer but not in excess of \$120. a month. It was clearly not the intention to restrict the number of employers from whom pensions or gratuities were received, but only to limit the total amount to be paid. Therefore, it makes no difference that the pensioner may be on the pension or gratuity rolls of two or more employers at the same time, and the Board is required to pay an amount equal to the pension or gratuity received from all employers, provided that the total amount paid by the Board does not exceed \$120 a month.\* The probability is that there will be few such cases because usually in cases where two or more employers pay pensions to the same individual, the payment is made by one of the employers who, in turn, charges the others for their respective portions. It would be well, however, to check for such cases but it will probably be sufficient to make this check from the alphabetical index of pensioners.

**Question**

**No. 7.**

"Many special case pensions are noted by the reporting railroad companies as not coming within the pension rules and having been arbitrarily computed. When no earnings and length of service data is given there is not the possibility of even an approximate check as to the accuracy of the amount of pension awarded. Shall the amounts specified in the LQ-4 forms in all such cases be accepted as correct?"

**Opinion:**

The Board is required under this Section to pay the amount "granted" to a pensioner and there is no provision to the effect that the amount "granted" must have been computed in accordance with the employer's regular pension plan. There is no need, therefore, to check the employer's computation of the pension, \* and the amount certified by the employer on form LQ-4 as the amount being actually paid, not exceeding \$120, should be accepted by the Board. However, in those cases where it can be determined that such amount was diminished by the reason of a general reduction or readjustment made subsequent to December 31, 1930, the amount paid must be increased to cover such diminution but not in excess of \$120.

\* except for cases discussed in Question 1.

**Copies to:** Mr. Dailey  
Mr. Eddy  
Mr. Bronson  
Mr. Clark