

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-114817

DATE: AUG 2 1976

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MATTER OF: Railroad Retirement Board - Employee protective payments

DIGEST: Although it is the Federal agency charged with disbursement of funds appropriated for employee protection benefits pursuant to title V of Regional Rail Reorganization Act of 1973, Railroad Retirement Board is not charged with the responsibility for determining the propriety of each payment prior to or after its actual disbursement. The Consolidated Rail Corporation, U.S. Railway Association or acquiring railroad must make the actual payments to the beneficiaries and must certify to the Board the amounts paid. The Board's responsibility under the statute is satisfied when it reimburses those entities for payments made.

This decision is issued in response to a request for advice from the Railroad Retirement Board. The Railroad Retirement Board anticipates questions concerning the types and amounts of employee protection payments which are to be provided under the terms of title V of the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, January 2, 1974, 87 Stat. 985, 45 U.S.C. §§ 701-793 (Supp. IV, 1974). The Board is not certain from the terms of the Act what body has the responsibility for interpreting the sections of the Act concerning employee protection benefits.

Section 509 of the Act, 45 U.S.C. § 779 (Supp. IV, 1974) provides:

"PAYMENTS OF BENEFITS

"SEC. 509. The (Consolidated Rail) Corporation, the (United States Railway) Association (where applicable), and acquiring railroads, as the case may be, shall be responsible for the actual payment of all allowances, expenses, and costs provided protected employees pursuant to the provisions of this title. The Corporation, the Association (where applicable), and acquiring railroads shall then be reimbursed for such actual amounts paid protected employees, not to exceed the aggregate sum of \$250,000,000, pursuant to the provisions of this title by the Railroad Retirement Board upon certification to said Board by the Corporation, the Association (where applicable), and acquiring railroads of the amounts paid such employees.

Such reimbursement shall be made from a separate account maintained in the Treasury of the United States to be know [sic] as the Regional Rail Transportation Protective Account. There is hereby authorized to be appropriated to such protective account annually such sums as may be required to meet the obligations payable hereunder, not to exceed in the aggregate, however, the sum of \$250,000,000. There is further authorized to be appropriated to the Railroad Retirement Board annually such sums as may be necessary to provide for additional administrative expenses to be incurred by the Board in the performance of its functions under this section."

The Secretary of the Railroad Retirement Board asks for our advice as to whether the Consolidated Rail Corporation, the United States Railway Association or the acquiring railroad (as applicable), or the Railroad Retirement Board has the ultimate authority to determine the propriety of each type of payment prior to disbursement of the Protective Account funds to reimburse the railroads. The Secretary suggests that the initial determination of the appropriateness and amount of a particular allowance, expense or cost would be made by the acquiring railroad but that the responsibility for determining the types of payments authorized should be vested in the Board.

The Secretary states that examples of the questions raised are whether reimbursement of payments representing either the employer's share of employment taxes are creditable as compensation under the Railroad Retirement Act and whether various fringe benefits are contemplated by section 509 of the Act.

We believe that questions which arise as to the types of payments to be made under section 509 were not intended by Congress to be resolved by the Railroad Retirement Board. The language of the statute provides that the Consolidated Rail Corporation, the United States Railway Association, or acquiring railroads are "responsible for the actual payment * * *" of title V benefits. The Consolidated Rail Corporation, the United States Railway Association, or acquiring railroads, as the case may be, are then " * * * reimbursed by the Railroad Retirement Board upon certification to said Board by the Corporation, the Association (where applicable), and acquiring railroads of the amounts paid such employees."

The Association and the Corporation (to the extent provided in the Regional Rail Reorganization Act of 1973) are mixed-ownership Government corporations, 31 U.S.C. § 856 (Supp. IV, 1974). They and the acquiring railroads are to make the actual payments to the protected employees. The statute provides that the Railroad Retirement Board will reimburse them;

it does not require the Board to verify the amounts of the payments. It seems likely that the reason the Congress appropriated the funds to the Board—which otherwise is concerned with retirement and not protective payments—is that the Congress could not know in advance how to apportion the funds among the Association, the Corporation, or the acquiring railroads.

We note that section 507 of the Act, 45 U.S.C. § 777 (Supp. IV, 1974) provides as follows:

"ARBITRATION

"SEC. 507. Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this title, except section 504(d) and those disputes or controversies provided for in subsection (g)(2)(D) of section 505 and subsection (b) of section 504 which have not been resolved within 90 days, may be submitted by either party to an Adjustment Board for a final and binding decision thereon as provided in section 3 Second, of the Railway Labor Act, in which event the burden of proof on all issues so presented shall be upon the Corporation or, where applicable, the Association."

The language of section 507 of the Act contemplates that resolution of disputes as to individual entitlements arising out of title V matters will be handled, at the request of any party to the dispute, by an Adjustment Board, as provided in 45 U.S.C. § 153 Second (1970 ed.). The Senate and House Committee reports on the bill which was enacted into this law stated: "This section provides for the arbitration of any disputes or controversies regarding the interpretation, application, or enforcement of the provisions of the title." S. Rep. No. 93-601, 93d Cong., 1st Sess., 49 (1973) and H. Rep. No. 93-620, 93d Cong., 1st Sess., 60 (1973). Hence, the ultimate definition of the benefits of the Act may, as a practical matter, be resolved through the arbitration process. We note that while the Corporation and Association are mentioned, the Act does not give the Railroad Retirement Board a role in the arbitration process. We feel, therefore, that the entity charged with actually disbursing the appropriated funds (for e.g., the Consolidated Rail Corporation) must be considered the entity with the responsibility to assure that those funds are lawfully and properly applied in the absence of specific legislation providing otherwise.

Accordingly, the Board's sole duty under these provisions is to make whatever payments are called for by the certifications made to it by the Corporation, Association, or acquiring railroads. These latter organizations are, in turn, responsible for assuring that these funds are properly applied.

R. F. Keller

Deputy Comptroller General
of the United States