

Chapter 5 – Earned Entitlements for Railroad Employees

LEGISLATIVE HISTORY

In the final quarter of the 19th century, railroads were among the largest companies in America. The first industrial pension in North America was established in the rail industry in 1874. The commercial success of the rail industry peaked in the period between 1900 and 1920, and rail employment decreased significantly in the 1920s.

In the mid-1920s, more than 80 percent of all rail workers were covered by pension plans. By the early 1930s, these pension plans began to face enormous financial problems.

Rail pension plans were for the most part poorly constructed. There was no regulation of railroad pensions and plans were frequently terminated, pension funds were chronically underfinanced, and most funds could not survive the financial pressures of the depression. These problems, plus a tradition of Federal regulation of the railroads, led to the enactment of the Railroad Retirement Act of 1934.

This act structured the Railroad Retirement System to provide annuities to retirees based on rail earnings and length of service. Benefits were disbursed for retirees at age 65, although workers with 30 years of service could retire at age 60 with a reduction in payments. The original disability provisions were very stringent. Little was provided for dependents and nothing for spouses.

The Railroad Retirement System has been modified many times by Congress. In the late 1940s and 1950s, benefits were liberalized, and the Railroad Retirement System was brought into closer conformity with Social Security. For instance, in 1946, benefits were extended to survivors, based on combined railroad and Social Security-covered employment. This extension demonstrated congressional concern for the social goal of providing income security in old age, or social insurance, rather than simply rewarding career performance.

In the 1970s and 1980s, the Railroad Retirement System encountered recurrent financial crises as a result of employment declines in the industry, inflation, and more beneficiaries. Major legislation was enacted in 1974, 1981, 1983, and 1987 to prevent the system from becoming insolvent.

The Railroad Retirement Solvency Act of 1983 (Public Law 98-76) increased payroll taxes on employers and employees, deferred cost-of-living increases, reduced early retirement benefits, made tier 2 benefits and vested dual benefit payments subject to Federal income taxes on the same basis as private and public service pensions, and provided other measures designed to improve railroad retirement financing. (Earlier that year, the Social Security Amendments of 1983 (Public Law 98-21) made up to 50 percent of tier 1 benefits subject to Federal income taxes on the same basis as Social Security

benefits.) Without the enactment of this legislation, the Railroad Retirement Board would have been required to substantially reduce benefit payments in 1983.

Financial measures to assist the Railroad Unemployment Insurance Account were also included in the 1983 Railroad Retirement Solvency Act. The legislation raised the taxable limit on monthly earnings and the base-year qualifying amount for unemployment benefits. The waiting period for benefits during strikes was increased from 7 to 14 days. A temporary repayment tax on railroad employers began July 1, 1986, to initiate repayment of the loans made by the Railroad Retirement Account. The 1983 legislation also mandated the establishment of a Railroad Unemployment Compensation Committee to review the unemployment and sickness benefit programs and submit a report to Congress. The Committee convened in 1984 and reviewed all aspects of the Railroad Unemployment Insurance System, especially repayment of the system's debt to the Railroad Retirement Account and the viability of transferring railroad unemployment benefit payments to State programs.

The Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99-272) amended the temporary unemployment insurance loan repayment tax beginning July 1, 1986, continued authority for borrowing by the Railroad Unemployment Insurance Account from the Railroad Retirement Account, and provided a contingency surtax on rail employers if further borrowing took place.

The Omnibus Budget Reconciliation Act (OBRA) of 1987 (Public Law 100-203) increased tier 2 tax rates in January 1988 by a total of 2 percentage points: 1.35 percentage points on employers and 0.65 percentage points on employees. In addition, the law extended for 1 year, until October 1, 1989, the time during which revenues from Federal income taxes on tier 2 railroad retirement benefits could be transferred from the general fund of the U.S. Treasury to the Railroad Retirement Account for use in paying benefits.

Railroad retirement amendments were included with railroad unemployment insurance amendments in the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647). This legislation ensured repayment of the Railroad Unemployment Insurance Account's debt to the Railroad Retirement Account by extending a temporary unemployment insurance tax until the debt was fully repaid with interest in June 1993. Public Law 100-647 also eased work restrictions and the crediting of military service in certain cases and provided more equitable treatment of severance pay for railroad retirement purposes. The 1988 amendments improved financing by indexing the tax base to average national wages and experience rating employer contributions. Changes enacted under the Act were based on the recommendations of the Railroad Unemployment Compensation Committee.

The Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) included a number of railroad retirement and Social Security provisions that affected payroll taxes and benefits beginning in 1990. The law increased the amount of earnings subject to Social Security and railroad retirement payroll taxes by including contributions to 401(k)

deferred compensation plans in the measure of average wages, which is used to index the wage base. It also extended for 1 additional year, until October 1, 1990, the time during which revenues from Federal income taxes on tier 2 railroad retirement benefits may be transferred to the Railroad Retirement Account for use in paying benefits.

The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) further extended the date of this transfer until October 1, 1992, and also permanently exempted supplemental annuities from reductions under the Gramm-Rudman deficit reduction measures adopted by Congress.

In 1991, a contingency surtax (3.5 percent), effective in the event of further borrowing by the Railroad Unemployment Insurance Account, was eliminated. Instead, a surcharge will be added to employers' unemployment insurance taxes for a calendar year if the balance in the unemployment insurance account on the previous June 30 goes below \$100 million (as indexed). The surcharge rate would be 1.5, 2.5, or 3.5 percent depending on how low the balance has fallen. If a 3.5 percent surcharge goes into effect for a given year, the maximum rate for any employer would be 12.5 percent rather than 12 percent. If the account balance on the preceding June 30 is above \$250 million (as indexed), the excess will be refunded to the employers in the form of a rate reduction for the year through a pooled credit.

The Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) removed the maximum taxable earnings base for purposes of paying the Medicare payroll tax, thus making all railroad retirement tier 1 earnings subject to the Medicare payroll tax. Public Law 103-66 also increased the amount of Social Security and railroad retirement tier 1 benefits subject to Federal income taxes for persons with higher incomes. A provision in the Social Security Administrative Reform Act of 1994 (Public Law 103-296) extended the transfer of Federal income taxes on tier 2 railroad retirement benefits to the Railroad Retirement Account on a permanent basis and a retroactive payment was made, covering the period October 1, 1992 through September 30, 1994.

In 1996, Congress enacted the Railroad Unemployment Insurance Amendments Act of 1996 (Public Law 104-251). Among other provisions, this law raised daily benefit rates for unemployment and sickness benefits and revised the formula for indexing future rates. The Act shortened the waiting period for initial unemployment and sickness benefits, cut the weeks of extended benefits payable to rail workers with more than 15 years' service, and established an earnings test for workers with claims for intermittent unemployment.

The Senior Citizens' Freedom to Work Act (Public Law 106-182) eliminated the earnings limitation on beneficiaries beginning with the month the beneficiary reaches the full retirement age. In the calendar years before the year in which the beneficiary reaches the full retirement age, \$1 in benefits is withheld for every \$2 earned above an exempt amount (\$14,160 in 2011). For months in the calendar year in which the beneficiary reaches the full retirement age (up to the month the beneficiary reaches the full retirement

age), \$1 in benefits is withheld for every \$3 earned above an exempt amount (\$37,680 in 2011).

The Railroad Retirement and Survivors' Improvement Act of 2001 (Public Law 107-90) made a number of changes to railroad retirement benefits and financing. In terms of benefit changes, the 2001 law: (1) liberalized early retirement benefits for 30-year employees and their spouses (employees with 30 years of railroad service and their spouses may retire at age 60 with full tier 1 and tier 2 annuities); (2) repealed the cap on total monthly retirement and disability benefits payable to an employee and spouse; (3) lowered the minimum service requirement for retirement annuities from 10 years to 5 years of service performed after 1995; and (4) increased benefits for some widow(er)s.

In terms of financing changes, the 2001 law: (1) established the National Railroad Retirement Investment Trust, which is authorized to invest funds in *nongovernmental* assets as well as government securities (the Board of Trustees invests assets, pays administrative expenses and transfers funds to a disbursing agent responsible for the payment of benefits); (2) adjusted payroll tax rates paid by employers and employees (beginning in 2004, tier 2 tax rates are based on a 10-year "average account benefits ratio" with employer rates ranging from 8.2 percent to 22.1 percent and employee rates ranging from 0 percent to 4.9 percent); (3) repealed the supplemental annuity work-hour tax; (4) eliminated the Supplemental Annuity Account and transferred the balance in the account to the Trust (the Trust will pay supplemental annuity benefits); (5) provided authority to transfer Railroad Retirement Account funds not needed to pay current administrative expenses to the Trust (the Trust will pay tier 2 benefits); (6) provided authority to transfer Social Security Equivalent Benefit Account (SSEBA) funds not needed to pay current benefits and administrative expenses to the Trust (the SSEBA will pay the Social Security level of tier 1 benefits and the Trust will pay the portion of tier 1 benefits in excess of the Social Security level); (7) provided authority to transfer Dual Benefit Account funds needed for dual benefit payments to a disbursing agent; and (8) provided tax-exempt status for the Trust. The 2001 law was based on joint recommendations to Congress negotiated by rail labor organizations and rail freight carriers.

In the 109th Congress, several minor changes were made to the Railroad Retirement System. The Railroad Retirement Disability Earnings Act of 2006 (Public Law 109-478) increased the monthly earnings limit for RRB disability beneficiaries from \$400 to \$700 in 2007 and indexed the disability earnings limit for subsequent years to the Average Wage Index (\$780 in 2011). The Pension Protection Act of 2006 (Public Law 109-280) eliminated the requirement that a railroad employee must be entitled to and receiving an annuity in order for his or her divorced spouse to receive an annuity. It also extended the payment of tier 2 annuities to surviving former spouses pursuant to court decrees upon the death of the railroad employee. Finally, the Railroad Retirement Technical Improvement Act of 2006 (Public Law 109-305) required the Secretary of the Treasury to continue to serve as disbursing agent for railroad retirement benefits.

In the 111th Congress, the American Recovery and Reinvestment Act of 2009 (ARRA, Public Law 111-5) provided a one-time economic recovery payment to several groups, including all adult railroad retirement beneficiaries. ARRA also added an additional 13 weeks to the maximum amount of time railroad workers could receive extended unemployment benefits, allowing for up to 13 weeks (less than 10 years of railroad service) or 26 weeks (10 or more years of railroad service) of extended benefits in addition to the 26 weeks of normal benefits provided under current law. ARRA also provided that up to \$2,400 in railroad unemployment and sickness benefits would not be subject to federal or state income taxes in 2009. The Work, Homeownership, and Business Assistance Act of 2009 (WHBAA, Public Law 111-92) extended these provisions by one year to June 30, 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law 111-312) extended the WHBAA provisions by one year to June 30, 2011. The special extended unemployment benefit periods could begin no later than December 31, 2011.