

Director of Data Processing and Accounts

MAY 19 1977  
L 77-3561

General Counsel

Sick leave - Agreement between the Portland Terminal Railroad Company and the Railway Patrolmen's International Union

This is in response to your memorandum of April 1, 1977, in which you request an opinion as to whether the sick leave provisions of the above agreement would qualify as a "plan" under section 1(h)(6)(vi) of the Railroad Retirement Act of 1974 (45 U.S.C. § 231(h)(6)(vi)).

The agreement covers Special Officers and, in Article VI, provides for a sick leave allowance for those officers with at least one year of service on a position in the Company's Police Department. The amount of allowance per calendar year is based upon the employee's length of service. An employee is paid his full wage for a sick leave day so long as the work of his position is performed by another employee without additional expense to the Company. The limits on sick leave may be extended in individual meritorious cases at the sole discretion of the employer.

In light of the above, I am of the opinion that the sick leave provisions of the submitted agreement constitute a "plan" within the meaning of the above-cited section of the Railroad Retirement Act, and, therefore, benefits paid pursuant to these provisions are excludable from compensation under the Act.

Dale G. Zimmerman  
General Counsel

TWS:mco