

Pension Benefit Guaranty Corporation

76-39

March 19, 1976

REFERENCE:

[*1] 4043. Reportable Events
4043(b)(2) Reportable Events. Amendment Decreasing Benefits
4048 Date of Termination

OPINION:

This is in response to your inquiry of February 13, 1976, and subsequent telephone conversation with * * * of my staff, requesting advice on behalf of * * *

As I understand the pertinent facts, on or about April 1, 1976 (the "conveyance date"), the rights and obligations under certain employee pension benefit plans (the "existing plans") of the railroads in reorganization will be transferred to * * * by Special Court order pursuant to Section 303(b)(6) of the Regional Rail Reorganization Act of 1973, 45 U.S.C.A. § 1701 et seq. ("Rail Act"). Subsequently, amendments to the existing plans will be adopted providing that no benefits will accrue with respect to service performed on or after the conveyance date and providing that an employee's compensation with * * * will be included in computing his final average salary under the benefit formula of each of the existing plans. * * * will continue to place people in pay status and to pay benefits under the existing plans. Contributions to the existing plans will be made by * * * so as to comply with the minimum funding [*2] standard required under Section 412 of the Internal Revenue Code of 1954.

Furthermore, prior to deciding whether to terminate any or all of the existing plans in whole or in part or to assume any or all liability for past service with the railroads in reorganization, * * * expects to adopt a new covered plan (the "new plan"). This plan would cover all * * * employees who are either currently participants in the existing plans or who are not members of the present collective bargaining units. The new plan will not cover * * * employees who are members of the collective bargaining units and who are not participants in the existing plans as of the conveyance date. The benefit formula for participants under the new plan who are not members of the collective bargaining units will contain an offset for retirement benefits provided under the Railroad Retirement Act and will be at least as favorable as the current pension plan benefit formula. The benefit formulas and contribution levels of the existing plans will be retained, for agreement employees who are participants in the existing plans as of the conveyance date. For eligibility and vesting purposes under the new plan, all participating [*3] * * * employees will receive credit for prior service with a railroad in reorganization. Should * * * decide to maintain, in whole or in part, the existing plans, * * * can be expected to credit past service for benefit computation purposes by "consolidating" the existing plans with the new plan.

You asked the Pension Benefit Guaranty Corporation ("PBGC") to determine whether the transfer of the rights and obligations under the existing plans pursuant to Section 303(b)(6) of the Rail Act or the subsequent adoption of amendments to the existing plans providing that no benefits will accrue for service performed on or after the conveyance date and providing that an employee's compensation with * * * will be included in computing his final average salary under the benefit formula of each of the existing plans will result in the occurrence of a reportable event under Section 4043 of the Employee Retirement Income Security Act of 1974 (the "Act"). You also requested information about whether PBGC requires disclosure of a reportable event to plan participants.

Based on the above facts it is the conclusion of PBGC that neither the transfer nor the subsequent adoption by * * * of amendments [*4] to the existing plans whereby an employee's compensation with * * * will be included in computing his final average salary under the benefit formula of each of the existing plans will result in the occurrence of a reportable event of the type described in Section 4043 of the Act. However, the adoption by * * * of amendments to the existing plans providing that no benefits will accrue for service performed on or after the conveyance date will be a reportable event under Section 4043(b)(2). Section 4043(b)(2) provides:

"For purposes of this section a reportable event occurs . . . when an amendment of the plan is adopted if under the amendment, the benefit payable with respect to any participant may be decreased."

The freezing of a plan means the benefit payable under that plan is not as great as it would have been absent the amendment. This is true even though, under the circumstances the the combined total benefit payable to a participant under one of the existing plans and under the new plan will be as large as the benefit payable under one of the existing plans had it not been amended to freeze benefit accruals. Consequently, if the existing plans are amended to provide that [*5] no benefits will accrue for service performed on or after the conveyance date the amendments must be reported to PBGC as required by Section 4043(a) of the Act.

As to your question regarding PBGC policy on disclosing reportable events to plan participants, there is no current PBGC requirement that plan participants be notified of the occurrence of such a reportable event. However, we call your attention to the reporting and disclosure requirements under Title I of the Act with respect to the proposed actions.

Additionally, please note that if, and when, * * * decides to give credit for benefit computation purposes for past * * * service with the railroads in reorganization, this will result in a reportable event of the type described in Section 4043(b)(8) since a merger or consolidation or transfer of assets and liabilities within the meaning of Section 208 will occur.

You have also asked whether the transfer of rights and obligations and/or the adoption of amendments to the existing plans will cause the PBGC either to consider the existing plans as terminated, or to terminate involuntarily the existing plans under Section 4042 of the Act.

A plan will not ordinarily be considered [*6] terminated when benefit accruals cease but where vesting and contributions under the plan continue. Thus, the adoption by * * * of amendments to the existing plans providing that no benefit accruals will occur with respect to service performed on or after the conveyance date would not be treated as a termination of the existing plans if * * * makes contributions to the existing plans so as to comply with the minimum funding standard required under Section 412 of the Internal Revenue Code of 1954 and takes the necessary steps to provide for continued vesting under the existing plans with service with * * * credited toward the vesting schedule of the existing plans.

We hope this will be of assistance and apologize for the delay in our response.

Henry Rose
General Counsel