



Supreme Court Holds That Payments For Lost Wages Are Taxable “Compensation” Under The Railroad Retirement Tax Act

***BNSF Railway Co. v. Loos*, No. 17-1042**

Decided March 4, 2019

Today, the Supreme Court held 7-2 that payments for lost wages due to on-the-job injuries are a form of taxable “compensation” under the Railroad Retirement Tax Act (“RTTA”).

Background:

A railroad employee sued the railroad for work-related injuries and won a jury award that included \$30,000 for lost wages. The railroad moved to withhold from that amount \$3,765 to cover the employee’s share of taxes under the RTTA, which taxes railroad employee “compensation” in order to fund retirement benefits for railroad employees. 26 U.S.C. § 3231(e)(1). The district court denied the railroad’s motion and the Eighth Circuit affirmed, reasoning that an award for lost wages does not qualify as taxable “compensation” under the statute because “compensation” means “any form of money remuneration paid . . . for services rendered,” *id.*, which does not include payments for services the employee *would have* rendered but for the injury.

Issue:

Whether payments to railroad employees for lost wages due to on-the-job injuries are taxable “compensation” under the RTTA.

Court’s Holding:

Yes. The term “compensation” under the RTTA includes not only payments for active service, but also payments for a period of absence from active service that stems from the “employer-employee relationship.” *Social Sec. Bd. v. Nierotko*, 327 U.S. 358, 366 (1946).

“[W]e hold that ‘compensation’ for RTTA purposes includes an employer’s payments to an employee for active service and for periods of absence from active service. It is immaterial whether the employer chooses to make the payment or is legally required to do so.”

Justice Ginsburg,
writing for the majority

Gibson Dunn Named
Appellate Firm of the Year





What It Means:

- The Court’s decision allows railroads to withhold RRTA taxes from payments they make to injured employees for lost wages.
- As a result of this required withholding of taxes, injured railroad employees will not receive more money from payments for lost wages than they would have received from payments for actual services rendered.
- The Court harmonized two statutes governing railroad employee retirement benefits: (1) the Railroad Retirement Act, which determines benefits payable to railroad employees; and (2) the RRTA, which taxes employee “compensation” to pay for those benefits. The Railroad Retirement Act defines “compensation” to include payment “for time lost as an employee,” 45 U.S.C. § 231(h)(1), and that same term in the RRTA now also encompass lost wages.
- The decision is the second time in the last two Terms that the Court construed the RRTA. In *Wisconsin Central Ltd. v. United States*, 585 U.S. ___ (2018), Gibson Dunn successfully argued that stock options were not “compensation” under the RRTA because they are not “money remuneration” within the meaning of the statute.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

[Caitlin J. Halligan](#)

+1 212.351.3909

challigan@gibsondunn.com

[Mark A. Perry](#)

+1 202.887.3667

mperry@gibsondunn.com

Related Practice: Tax

[Benjamin H. Rippeon](#)

+1 202.955.8265

bription@gibsondunn.com

© 2019 Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

If you would prefer NOT to receive future e-mail alerts from the firm, please reply to this email with the word "UNSUBSCRIBE" in the subject line. Thank you.

Please visit our website at www.gibsondunn.com. | [Legal Notice, Please Read.](#)