

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-39A

3(1), 3(2), 4(a)

APR 6 1981

Mr. John Gaal
Bond, Schoeneck & King
One Lincoln Center
Syracuse, New York 13202

Dear Mr. Gaal:

This is in reply to your letter of August 15, 1980, to the Secretary of Labor, which has been referred to this Office for reply. You are concerned about the possible denial of retirement benefits to your client, Mr. Edwin L. Bristol, a former employee of Eastern Airlines (Eastern). Before examining whether or not Mr. Bristol has been improperly denied benefits, it is necessary to determine whether space-available passes and reduced-rate travel benefits (Travel Benefit Program) offered by Eastern to its retired employees constitute an employee benefit plan covered under the Employee Retirement Income Security Act of 1974 (ERISA). Our response in this regard is limited to coverage of the Travel Benefit Program under title I of ERISA which is generally administered by the Department of Labor.

You advise that Mr. Bristol terminated his employment relationship with Eastern in 1964 with vested pension rights under the Eastern retirement plan (the Retirement Plan). Recently, after reaching the retirement age stipulated in the Retirement Plan, Mr. Bristol began receiving his vested pension benefits. According to the Retirement Plan, retired employees who are receiving retirement benefits from Eastern are eligible for the Travel Benefit Program. You indicate, however, that Mr. Bristol has been denied participation in the Travel Benefit Program.

Section 4(a) of ERISA provides that title I generally applies to any employee benefit plan established or maintained by an employer engaged in commerce or in any activity affecting commerce, by an employee organization representing employees engaged in commerce or in any activity affecting commerce, or by both. There are exceptions provided in section 4(b) to this general rule but these exceptions do not appear to apply to the Travel Benefit Program.

In order to come within the definition of the term "employee benefit plan" under section 3(3) of ERISA, a plan must be either an "employee welfare benefit plan," as defined in section 3(1) of ERISA, or an "employee pension benefit plan," as defined in section 3(2) of ERISA.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" as any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing one of the benefits listed in section 3(1)(A) or one of the benefits described in section 302(c) of the Labor Management Relations Act, 1947 other than pensions on retirement or death, and insurance to provide such pensions. Your letter represents that the Travel Benefit Program was established and is maintained solely for the purpose of providing retired employees of Eastern an opportunity to travel at reduced rates. The benefit of reduced travel rates is not one of the benefits listed in section 3(1) of ERISA and, therefore, the Travel Benefit Program is not an employee welfare benefit plan within the meaning of that section.

Section 3(2) of ERISA defines the term "employee pension benefit plan" to include any plan, fund, or program established or maintained by an employer, an employee organization, or both which by its express terms or as a result of surrounding circumstances provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond. Thus the fact that a program established or maintained by an employer provides a benefit to employees after retirement would not cause that program to fall within the definition provided in section 3(2) unless the benefit provided represents either retirement income or a deferral of income.

Your letter contains no factual representations from which it might be concluded that the Travel Benefit Program constitutes an employee pension benefit plan within the meaning of section 3(2) of ERISA. Therefore, since the Travel Benefit Program is not an employee welfare benefit plan and does not appear to be an employee pension benefit plan, it is not an employee benefit plan within the meaning of section 3(3) of ERISA and, thus, it is not covered under title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs