



Suspension of Benefits Cases

29 U.S.C. 1053(a)

- Generally, ERISA prohibits a pension plan from failing to make payments to a participant who has reached normal retirement age, see ERISA Section 203(a). However, that same section created a limited exception for eligible participants who have reached normal retirement age but have continued to work.

29 U.S.C. Sec. 1053(a)(3)(b)

- “A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of the payment of such benefits...
- (ii) in the case of a multiemployer plan, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.”

29 CFR 2530.203-3

- ...A plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age, or for the suspension of that portion of pension benefits which exceeds the normal retirement benefit, or both, for any reemployment...to the extent (but only to the extent) that suspension of such benefits does not affect a retiree's entitlement to normal retirement benefits payable after attainment of normal retirement age...

Central States Suspension of Benefits Rules

- **The Central States pension plan sets forth suspension of benefits rules in Section 4.13 (g)(3) as follows:**
- **Restricted reemployment means and includes any of the following...:**
- **(A) Reemployment in a Core Teamster Industry (as defined in paragraph 4.13(g)(4)), except that a pensioner who has reached age 65 may work a maximum of 40 hours per month in such a position;**
- **(B) Reemployment by a Contributing employer...**
- **(C) Reemployment in any position...that is covered by a Teamster contract...**
- **(D) Reemployment in any position in the same industry in which the Pensioner earned Contributory Service Credit while covered by the Pension Fund...**
- **(E) Reemployment in any position in the same job classification as any other Participant then employed by a Contributing Employer located within 100 miles of the position, except that a Pensioner that has reached age 60 is not subject to this subparagraph (e).**



Procedural Context

- Central States plan participants are obligated to keep the Pension Fund informed of any reemployment they accept. Their pension application asks if they are reemployed. Central States also periodically mails inquiries to retirees, asking them if they have obtained employment after retirement. Participants may ask Central States for a determination as to whether their employment is restricted reemployment at any time.



Three Central States Cases



The Case of Mr. Fabricator

- Mr. Fabricator worked as a Teamster truck mechanic for many years. He also worked part-time for his father doing sales at the same time. His father had his own business manufacturing covers for outdoor generators. Mr. Fabricator retired from the mechanic job and became the president of the family business. He also applied for and started receiving his Central States pension.

Suspension due to Same Job Class within 100 Miles

- Mr. Fabricator's pension benefits were suspended because he was reemployed in the **same job classification** as other Participants employed by Contributing Employers **within 100 miles of the position**. Central States noted that Mr. Fabricator's **activities** included oversight of the engineering, production, sales and the accounts payable and receivable areas as well as overseeing the company's day to day operations.

Job Class Not Defined

- The Central States rules do not define the term “Job Classification”
- The Central States rules do not include a list of job classifications
- In practice, Central States focuses on job **activities**, and if any job activity is the same of that of another participant, they consider that to be a violation of the rules

CFR Sec. 2560.503-1 (h)(2)(iii)

- Client has the right to access documents relevant to the claim
- CFR Sec. 2560.503-1 (m)(8) defines relevant to include documents relied on by the plan administrator in making the benefit determination, or those submitted, considered or generated in the course of making the benefit determination.

We Ask for Everything

- Before drafting and filing the appeal, we requested everything Central States relied upon to make the decision, including the participating employers within 100 miles, and the job classifications of the participants deemed to be in the same job classification as Mr. Fabricator

The Response

- Central States replied with a list of employees asserted to be within 100 miles of Mr. Fabricator's position and in the same job classification. The list included salespersons and working foremen, production employees, and salespersons employed throughout the state. They concluded with a general category: "Lastly, the employees of local unions within the surrounding area are participants of the Pension Fund and perform general office work, which include accounts payable and receivable, as well as overseeing day to day operations."

Client is The President

- We argued that client's job was not that of production employee, salesperson, or general office worker. His job is President, a salaried, executive job classification.

We Used Industry Standards

- As a salaried worker, client's job is classified by the U.S. Department of Labor as Executive, and exempt from the wage and hour restrictions of the Fair Labor Standards Act. See Fact Sheet #17; Exemption for Executive...Employees under the Fair Labor Standards Act (FLSA), and Minimum Wage and Overtime Pay Employment Law Guide, printed from the U.S. Department of Labor website, www.dol.gov.

Activities of the Job are not Job Classes

- Individual activities do not necessarily define a job classification. Every job includes a variety of tasks. Qualifications, training, responsibilities and degree of independence define job classifications. Even though Mr. Fabricator spent time doing sales, accounts payable and receivable, and overseeing production and engineering, these individual tasks did not define his overall job classification. His responsibility for oversight of the entire company as president defined his job classification as executive.



Result

- We WIN. Client gets his pension reinstated, and was repaid all the payments he had missed.



Mr. Driver

- Client worked for UPS for 36 years. After he retired, he asked his Teamsters local about working part-time for a car dealership driving individual cars for trades, special orders, or other reasons. The local advised client that this job would not violate the reemployment rules, and client accepted the job.

Central States Disagrees

- Mr. Driver got a letter stating that his employment constituted Restricted Reemployment in (1) a **Core Teamster Industry (car haul)**, and (2) the **same job classification** as other Participants then employed by Contributing Employers located **within 100 miles** of his position.



Core Teamster Industries are listed (but not defined) in the plan rules as follows:

- trucking and/or freight;
- small package and/or parcel delivery;
- **car haul;**
- tank haul;
- warehouse;
- food processing and/or distribution (including grocery, dairy, bakery, brewery and soft drink);
- building material and/or construction.

We Ask for Everything

- Again, we asked Central States to provide us with everything they used to make the decision, including identities and locations of the participating employers and participants working in the same job classification within 100 miles of Mr. Driver.

The Response

- Central States provided a list of the names of contributing employers engaged in car haul but no addresses. They also listed union locals. None of the union locals named in that letter was within 100 miles of Mr. Driver's place of employment.

The Response continued

- Central States also refused to detail job classifications of plan participants who were supposedly within 100 miles of Mr. Driver. They stated that they did “not know the locations of all of these companies’ facilities or the locations of their customers’ plants (where they pick up vehicles).” Their decision was “based on its members’ combined knowledge and experience”, and they concluded that some or all of these Contributing Employers employ Participants whose job duties include delivering individual vehicles to within 100 miles of Mr. Driver.

Arguments on Appeal

- The use of the word “haul” connotes the use of a vehicle that pulls or drags a trailer loaded with freight, not driving an individual car.
- The Teamsters website explains that a Commercial Drivers License is a requirement for obtaining a Teamsters car haul position. Mr. Driver had no such license.
- The collective bargaining agreements detail requirements for drivers with regard to the loading and delivery of cars on trailers.

Help from the Local

- The Office Manager of Mr. Driver's local wrote in a letter to Central States that no car haul was being performed by pension plan participants in the 13 counties covered by her office, well over a one-hundred mile radius.
- She also wrote that client's job was not "car haul."



Result

- We WIN. Client gets to keep his job and his pension.



Mr. Warehouse

- Mr. Warehouse left his teamster job in Indiana and moved to Kentucky. He got a production job in a non-union factory which manufactures automobile components.
- Central States advised Mr. Warehouse in 2006 that his current employment was restricted reemployment under the plan, but that “you may perform this work for an unlimited number of hours per month at age 60 and still receive your pension benefit.”

Teamsters Send Client a List Acceptable Jobs

- “The following examples of reemployment are generally permitted for 80 hours per month if you are 57-59 and for unlimited hours if you are 60 or older. ***Under the old rules***, these jobs would generally not be permitted at all.
- Retail clerk (not in warehouse)
- **Manufacturing work**
- Office work
- Work in an airline
- Shuttle bus, motor coach or limo driver
- Local delivery of retail products via car or light truck (e.g. auto parts, prescriptions)”



Flip Flop

- Mr. Warehouse turns 60 and applies for his pension.
- Central States asks for a job description, circles the work “forklift” on client’s description of his production duties, and writes the words “Warehouse-Deny” on client’s application.
- Central States also claims same job class within 100 miles of Mr. Warehouse.

We Ask for Everything

- In preparation for appeal, we ask Central States for everything they relied to make the decision, including the identities and locations of participating employers within 100 miles, and the details of the jobs of participants allegedly in the same job classifications.

The Response

- Central States answers with three participating employers. We check the mileage on Mapquest, and it comes up as over 100 miles. We check the mileage according to geographical coordinates, and it comes back as under 100 miles. We write back and request their method of determining distance.



Central States Backtracks

- Upon further review using GPS coordinates, Central States determines that the examples they gave fall do not fall within 100 miles, and apologize for any confusion or inconvenience.

Central States Compares Job Tasks, not Classifications

- Central States notes that Mr. Warehouse's tasks include picking up and inspecting parts, packing service orders, making and applying labels, and loading and unloading service part trucks.
- Central States identifies one freight company within 100 miles of client, noting that the Collective Bargaining Agreement covers employees who do checking, stacking, unloading, handling, receiving, assembling and allied work.

Central States' Conclusion

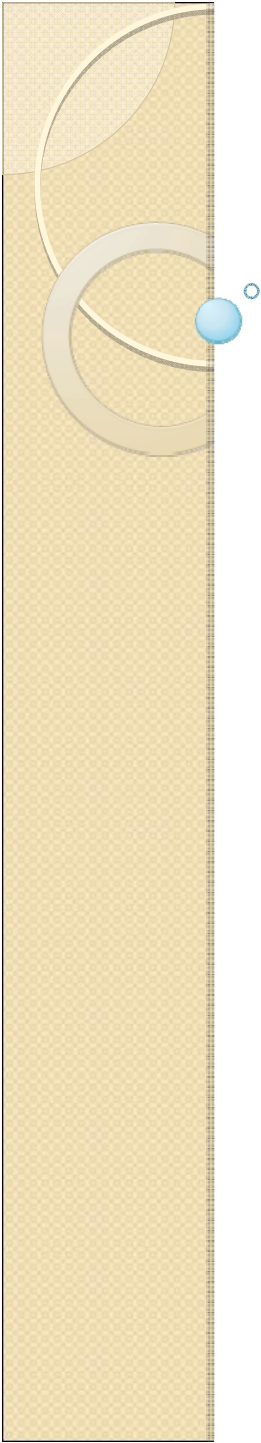
- “The Benefit Claim Appeals Committee found Mr. Warehouse’s **essential job duties and responsibilities** correspond with those described in the above Agreements; therefore, he is working within the **same job classification** as other participants working for Contributing Employers within 100 miles of his position.”

Arguments

- The Central States reemployment rules limit restricted reemployment to the warehouse industry, and Mr. Warehouse's job is in production
- The Central states reemployment rules specifically allow manufacturing jobs
- The "same job class within 100 miles" rules does not apply to participants over 60 years of age, and should not have been cited as a reason to deny Mr. Warehouse's pension

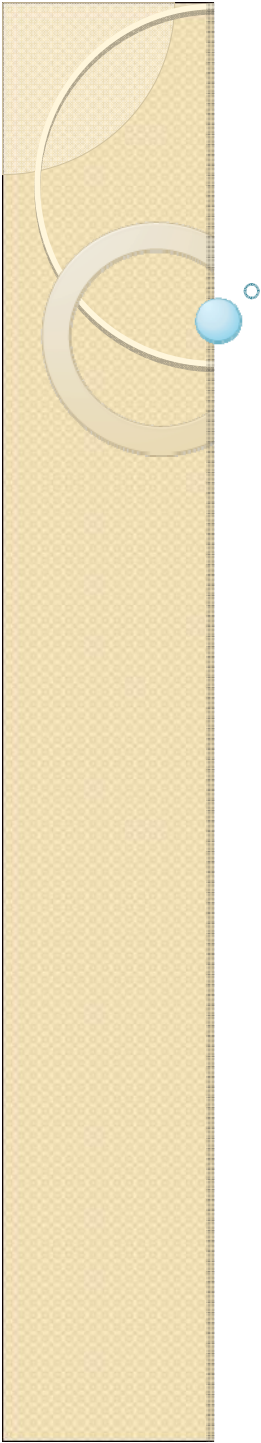
Evidence in Support

- Industry standards: The North American Industry Classification System (NAICS), a standard used by Federal statistical agencies for business classification, defines warehouses as “establishments **primarily engaged** in operating merchandise warehousing and storage facilities.”
- Detailed descriptions of employer’s Kaizen production system, which follows the Toyota Production Service (TPS) model for manufacturing. One of the many goals of TPS is to eliminate the need for costly warehouses; this factory intentionally manufactures their products to avoid storing them for lengthy periods of time.
- Central States website listings for warehouse jobs includes two grocers, one of them a wholesale grocer, and a sporting good retailer. There are no warehouse jobs on the list that are in any way associated with any type of manufacturing facility.



The Result

- We LOSE. Central States sends a 3 ½ page letter that addresses all of our arguments.
- Central States explains that they consistently interpret “Core Teamster Industry” by looking at the actual job duties and location of the work, that client works in a warehouse, and does work similar to union dock workers.
- Central States also cites to their plan provision which states that all interpretations of the Pension Plan by the Board of Trustee shall be binding on all individuals claiming benefits.



Other Issues

Deference to the Administrator

- If your issue is not directly addressed by plan rules, you may be out of luck. Great deference is given to the plan administrator as to interpretation of plan rules, as long as the interpretation is reasonable and participants are treated similarly.



Recoupment

- Treas. Regs. Sec. 1.401(a)-13(c)(2)(iii) allow plans to recover the overpayment of benefits made to a participant without violating the anti-alienation rule.
- Recoupment is sometimes waived if the client had good reason to believe that the reemployment was not in violation of the rules. Always ask for the procedure to request a waiver if your client gets stuck with recoupment.

Strategies

- Ask the Plan Administrator to give you everything they relied on to make the decision.
- In addition to the general request, also ask for the specifics indicated in the rules, including the addresses of the participating employers, the job classes of participants within 100 miles of client and what they do, and what method they use to determine mileage for Central States cases.

Strategies continued

- There is very little case law interpreting these rules, since few cases are litigated. Don't be afraid to rely on outside information, particularly Central States website resources, collective bargaining agreements, industry standards, employment classifications, and anything else you can find.



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