

**FILED**

4/27/2021 JMK

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

RICHARD W. BROWNER, JR.

No. **1:21-CR-268**

Violation: Title 18, United States  
Code, Section 1343

JUDGE ELLIS  
MAGISTRATE JUDGE CUMMINGS

COUNT ONE

The SPECIAL NOVEMBER 2019 GRAND JURY charges:

1. At times material to this indictment:

**Individuals and Entities Involved**

- a. The U.S. Railroad Retirement Board (“RRB”) was an independent agency of the Executive Branch of the United States headquartered in Chicago. The RRB’s primary function was to administer comprehensive retirement, disability, survivor, and unemployment/sickness benefit programs for the nation’s railroad workers and their eligible family members under the Railroad Retirement Act (“RRA”), Title 45 United States Code, Sections 231, *et. seq.*, and Railroad Unemployment Insurance Acts (“RUIA”), Title 45 United States Code, Chapter 11. The RRA replaced the Social Security Act for rail employers and employees.

- b. The RRB administered disability benefits to railroad employees who had an occupational disability and were permanently disabled for work in their regular railroad occupation and to railroad employees who were totally and permanently disabled and unable to work in any kind of regular job.

c. In order for a railroad employee to apply for disability benefits, he or she had to complete, among other things, RRB Form AA-1d (Application for Determination of Employee's Disability) and RRB Form AA-1 (Application for Employee Annuity). Both the RRB Forms AA-1d and AA-1 required the applicant to complete certifications.

d. On RRB Form AA-1d, applicants had to describe in detail the limitations resulting from their impairment and state when they could no longer work because of their conditions. The signature page of the RRB Form AA-1d reminded an applicant that he or she had to answer these questions truthfully and provided:

I agree to immediately notify the RRB if I work for any employer, railroad or non-railroad, or perform any self-employment work; if my condition improves . . . .

I know that if I make a false or fraudulent statement in order to receive benefits from the RRB or if I fail to disclose earnings or report employment of any kind to the RRB, I am committing a crime, which is punishable under Federal law.

e. RRB Forms AA-1d and AA-1 also included certifications that the applicant has received the RRB Booklet Forms RB-1d (Employee Disability Benefits) and RB-9 (Employee and Spouse Annuities, Events That Must Be Reported), which contained, among other things, requirements to notify the RRB if the applicant's condition improved or if the applicant performed any work, including through self-employment, regardless of how much the applicant earned. In pertinent part, the Booklet provided:

"Occupational disability" means one is "permanently disabled" for work in your "regular railroad occupation."

“Total and permanent disability” means one is “unable to work in any kind of regular job” and “permanently disabled” for any kinds of “regular work.”

“Substantial gainful activity” is, in general, work which results in earnings . . . it also refers to work activity involving the performance of significant physical or mental duties, or a combination of both, which are productive in nature. If you work or are receiving an annuity based on total and permanent disability, or if you have a period of disability or early Medicare, you may be subject to a finding of substantial gainful activity.

“Regular work” is the performance of the full range of material and substantial duties of any regular and gainful employment with any employer. Substantial duties are those that involve significant mental or physical activity even if they are only done part time. Gainful employment is work that is done for pay or profit, or is the kind that is usually done for pay or profit even if no profit is realized.

“Substantial gainful work” is any work generally done for pay or profit that involves performing significant physical or mental duties. Work may be considered substantial even if it is done part time. In evaluating work, consideration is given to job duties, skill, and experience required to do the job, in addition to pay. Although current work may pay less or may be different from previous work, a person may not necessarily be considered disabled.

**In any case, all work and earnings by a disability annuitant must be reported promptly to the RRB in order to avoid potential overpayments and penalties. (emphasis in original).**

“Disability ends if” you medically recover so that you are able to work, or if you return to work and hold a job whether or not there has been any substantial improvement in your condition.”

If in doubt, report.

f. The RRB’s Disability Benefits Division (the “DBD”), located in Chicago, Illinois, reviewed applications for occupational disability and total and permanent disability, which were submitted by railroad employees. Once an

application was approved, the RRB in Chicago caused benefits payments to be issued by the United States Treasury to a bank account as designated by the applicant.

g. Occasionally, the RRB in Chicago directed district offices of the RRB to send out RRB Form G-254, (Continuing Disability Report) to an annuitant, which requested information regarding, among other things, the annuitant's disability, employment, earnings, and work. The Form G-254 contained a certification that the information provided by the annuitant was true to the best of the annuitant's knowledge and that the annuitant understood that civil and criminal penalties could be imposed for providing false or fraudulent statements, withholding information or misrepresenting a fact or facts material to determining a right to benefits under the RRA, and/or failing to promptly report work earnings to the RRB.

h. Defendant RICHARD W. BROWNER, JR. worked as an assistant Line Engineer at the New Jersey Transit Corporation in Newark, New Jersey from in or around August 1974 to in or around September 2005.

i. On or about August 27, 2006, BROWNER submitted an application for occupational disability benefits. BROWNER signed the certifications accompanying RRB Forms AA-1d and AA-1. The DBD granted BROWNER's application and began causing disability benefits to be wired to BROWNER.

j. On or about February 9, 2007, the RRB in Chicago sent BROWNER a Form RL-210, notifying him that his application for benefits had been approved and that it was treating his application as a request for disability with a freeze, which entitled BROWNER to early Medicare benefits. The notice informed:

“Notify the Railroad Retirement Board (RRB) promptly if your condition improves; if you are working for pay or you are self-employed, regardless of the amount of earnings . . . Your case may be periodically reviewed to determine whether your condition remains severe enough to prevent any work activity to allow your disability freeze to continue.”

k. Beginning no later than in or around November 2013, and continuing until in or around July 2019, BROWNER worked as the manager and co-owner of OB-CO's Donuts, a donut shop in Tom's River, New Jersey. As manager and co-owner of OB-CO's Donuts, BROWNER routinely waited on customers, worked in the kitchen, picked up supplies for the restaurant, and otherwise worked on a regular basis at the donut shop.

l. For the tax years of 2013 through 2018, OB-CO's Donuts reported total gross revenue of approximately \$1,982,726 to the IRS in tax filings.

m. Every year, beginning in or around 2007, the RRB in Chicago sent BROWNER an RL-4 (Yearly Reminder Letter), which explained his responsibility to report work earnings and events that may affect his right to a disability and listed events that must be reported immediately to the RRB, including impairment improvement, return to work, performing work, whether for pay or not, including through self-employment, or receipt of anything of value in lieu of salary or wages for any work.

### **The Scheme to Defraud**

2. Beginning no later than in or around November 2013, and continuing through in or around July 2019, in the Northern District of Illinois, Eastern Division, and elsewhere,

**RICHARD W. BROWNER, JR.,**

defendant herein, knowingly devised, intended to devise, and participated in a scheme to defraud the RRB and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts, as further described below.

3. It was part of the scheme that, in order to receive disability benefits payments to which he was not entitled, BROWNER made multiple false representations to the RRB and concealed material facts from the RRB concerning his operation and management of OB-CO's Donuts.

4. It was further part of the scheme that, in or around June 2019, BROWNER submitted a Form G-254 to the RRB, in which BROWNER falsely represented that, for the period of January 1, 2017 to on or about May 22, 2019, he was not working and was unable to work because of his disability. In the Form G-254, BROWNER failed to disclose his ownership of and work at OB-CO's Donuts.

5. It was further part of the scheme that, between in or around November 2013 and in or around November 2019, BROWNER failed to respond to the RRB's Form RL-4 (Disability Reminder Notice) and did not notify the RRB that he owned, managed, and worked at OB-CO's Donuts.

6. It was further part of the scheme that, on or about July 17, 2019, BROWNER falsely represented to a federal agent that he did not work at OB-CO's Donuts and that OB-CO's Donuts was owned by his wife.

7. It was further part of the scheme that, between in or around November 2013 and in or around July 2019, BROWNER caused the RRB to authorize the payment of disability benefits totaling approximately \$226,443 to which he was not entitled.

8. It was further part of the scheme that BROWNER concealed, misrepresented, and hid, and caused to be concealed, misrepresented, and hidden, the existence of the scheme, the purposes of the scheme, and the acts done in furtherance of the scheme.

9. On or about December 1, 2016, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD W. BROWNER JR.,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted in interstate commerce by means of a wire communication from the United States Treasury in Kansas City, Missouri to Wells Fargo Bank in Minneapolis, Minnesota, certain writings, signs, and signals, namely, a wire transfer of disability benefits in the amount of \$3,474.38;

In violation of Title 18, United States Code, Section 1343.

**COUNT TWO**

The SPECIAL NOVEMBER 2019 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this indictment are incorporated here.

2. On or about December 1, 2017, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD W. BROWNER, JR.,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted in interstate commerce by means of a wire communication from the United States Treasury in Kansas City, Missouri to Wells Fargo Bank in Minneapolis, Minnesota, certain writings, signs, and signals, namely, a wire transfer of disability benefits in the amount of \$3,475.42;

In violation of Title 18, United States Code, Section 1343.



**COUNT THREE**

The SPECIAL NOVEMBER 2019 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this indictment are incorporated here.

2. On or about December 3, 2018, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

RICHARD W. BROWNER, JR.,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted in interstate commerce by means of a wire communication from the United States Treasury in Kansas City, Missouri to Wells Fargo Bank in Minneapolis, Minnesota, certain writings, signs, and signals, namely, a wire transfer of disability benefits in the amount of \$3,531.03;

In violation of Title 18, United States Code, Section 1343.

**COUNT FOUR**

The SPECIAL NOVEMBER 2019 GRAND JURY further charges:

1. Paragraphs 1 through 8 of Count One of this indictment are incorporated here.

2. On or about April 1, 2019, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

**RICHARD W. BROWNER, JR.,**

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted in interstate commerce by means of a wire communication from the United States Treasury in Kansas City, Missouri to Wells Fargo Bank in Minneapolis, Minnesota, certain writings, signs, and signals, namely, a wire transfer of disability benefits in the amount of \$3,612.60;

In violation of Title 18, United States Code, Section 1343.

**FORFEITURE ALLEGATION**

The SPECIAL NOVEMBER 2019 GRAND JURY alleges:

1. The allegations contained in Counts One through Four of this indictment are incorporated here for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of his violation of Title 18, United States Code, Section 1343 as set forth in the foregoing indictment,

RICHARD W. BROWNER, JR.,

defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any and all right, title and interest in property, real and personal, which constitutes and is derived from proceeds traceable to the charged offenses.

3. The interests of the defendant subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) include, but are not limited to, approximately \$226,443.

4. If any of the property described above, as a result of any act or omission by defendant: cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture or substitute property, as

provided in Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

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FOREPERSON

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Signed by Amarjeet Bhachu  
on behalf of the  
UNITED STATES ATTORNEY