

February 2, 2000
L-2000-5

Mr. B. L. P.

In reply refer to
R.R.B. No. A-

Dear Mr. P. :

This is in reply to your inquiry regarding your non-railroad employment as a file clerk and its impact on your future entitlement to an annuity under the Railroad Retirement Act (RRA).

You advise that you have been working as a file clerk at Modern Office Services, Inc., since February 1998 and plan to quit working on February 29, 2000, the day before your annuity under the RRA will begin. You question whether your annuity will be subject to the tier II restrictions related to last person employment if you continue to work at the same job (same location) but your employer is Systems Unlimited, Inc., a company which is owned, in part, by your present employer.

As you are aware, the RRA provides for the application of special work deductions where a retired employee performs compensated service for the last non-railroad employer by whom he was employed prior to receiving an annuity. This provision is found in Section 2(f)(6) of the RRA which provides, in pertinent part, as follows:

(A) Except as provided in subparagraph (B) -

(i) that portion of the annuity for any month of an individual as is computed under section 3(b) of this title and as adjusted under section 3(g) * * * shall * * * be subject to a deduction of \$1 for each \$2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by

whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue * * * .

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.

From the information you provided, it appears the only change in your employment status, were you to quit working for Modern Office Services, Inc., and begin working for Systems Unlimited, Inc., would be a payroll change. From your inquiry, we assume you would continue to perform the same job for Systems Unlimited, Inc., as you are currently performing for Modern Office Services, Inc., with the same duties and same supervisor. Under such circumstances, it is our opinion that the two employers noted are not different persons for the purpose of the application of the above-quoted provision.

I hope that the above information is of assistance to you. If you have any questions regarding this letter, please do not hesitate to contact me. My telephone number is (312) 751-4935, if you wish to contact me by telephone.

Sincerely,

Steven A. Bartholow
General Counsel

cc: Omaha, Nebraska field office