

## **EMPLOYER STATUS DETERMINATION**

**Systec Data Management, Inc.**

**Credibility of Service --**

**David E. McAllister**

This is the determination of the Railroad Retirement Board concerning the status of Systec Data Management, Inc. (Systec) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). This decision will also address the claim of David E. McAllister, S.S.A. No. 503-32-3039, for service to Systec during the period from February 1968 until June 1970.

Systec was a wholly-owned subsidiary of Data Sys-Tance, Inc., which in turn was owned by Kansas City Southern Industries, the parent company of the Kansas City Southern Railway Company (BA No. 1806) (KCS). Systec was incorporated in 1967 and liquidated in 1977. It provided computer services to rail and nonrail companies. On June 8, 1977, the Internal Revenue Service (IRS) issued a Technical Advice Memorandum involving the years 1973 and 1974 in which it held that Systec was an employer for purposes of the Railroad Retirement Tax Act (26 U.S.C. §3201, et seq.) (RRTA) because it was a railroad-owned company that performed a service in connection with the transportation of property by railroad. The IRS held, however, that only 15 of Systec's 50 computer programmers provided service to the railroad and that only the compensation paid to those 15 employees should be subject to RRTA taxes. The IRS Memorandum did not identify those 15 employees.

A copy of the IRS Memorandum was provided to the RRB by letter dated February 7, 1995, from Walter W. Howland of Kansas City Southern Industries, Inc. in connection with a claim made with the RRB by David E. McAllister in March 1994 for creditable railroad service for time worked at Systec from February 1968 to June 1970. Mr. Howland also provided with his letter a list of nine employees and their social security numbers whom he stated worked for Systec during the years 1968 through 1976. He did not indicate, however, whether those nine employees were among the 15 employees for whom the IRS assessed RRTA taxes. He did include Mr. McAllister on that list.

Records of the Board's Bureau of Research and Employment Accounts conflict with the list provided by Mr. Howland because those records indicate that Mr. McAllister was credited with 12 months of railroad service for each year from 1971 through 1976. In addition, Mr. McAllister also provided information which conflicts with Mr. Howland's list; in a letter to the agency dated March 14,

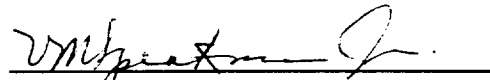
Systec Data Management, Inc.  
David E. McAllister

1994, Mr. McAllister indicated that he had worked for Systec only from February 1968 until June 1970.

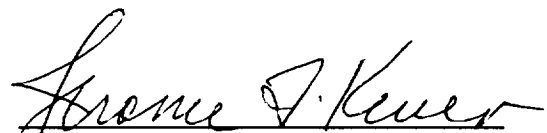
The Board finds that the question of the employer status of Systec is moot for the reasons set out below. Systec went out of business in 1977, almost 18 years prior to the time that a copy of the IRS Memorandum was provided to the Board in 1995. This case therefore differs from the cases of Trans-Mark Services, Inc. and Servitron, Inc., which also involved KCS. In Legal Opinion L-76-381, issued July 20, 1976, the Board's General Counsel found that service by employees of those two companies, each formed in 1969, should be considered to be creditable employee service under the RRA. The time gap which exists in this case was not present in those cases. Furthermore, even if the Board were to decide simply to adopt the holding in the 1977 IRS Memorandum, the four-year statute of limitations under section 9 of the RRA for reporting creditable service and compensation to the Board has expired. Since there is no evidence which definitely identifies the 15 Systec employees found by the IRS to have performed creditable railroad service, there is no basis to reopen the Board's records to give credit for time worked for Systec. See Pawelczak v. United States, 931 F.2d 108 (D.C. Cir. 1991). The Board therefore also denies Mr. McAllister's claim for creditable railroad service for the time that he claimed he worked for Systec from February 1968 until June 1970.



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V. M. Speakman, Jr.



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