

# 1562597



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

John M. [redacted]  
[redacted]

NOV 19 2003

Re: [redacted] Trans World Airlines, Inc.  
(TWA) Retirement Plan for Pilots (the Plan)

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's September 25, 2002 determination of your PBGC benefit. For the reasons stated below, the Board changed PBGC's determination by increasing your monthly PBGC benefit payable as a Modified Cash Refund Life Annuity (MCRLA)<sup>1</sup> starting on May 1, 2001 from \$1,848.67 to \$1,853.36.

**Determination and Appeal**

PBGC determined that you were entitled to a PBGC benefit of \$1,848.67 per month starting on your Actual Retirement Date (May 1, 2001) payable as an MCRLA. PBGC included a Benefit Statement, which shows information the former Plan administrator (TWA) used to calculate your Plan benefit. The Statement also shows that PBGC used TWA's Plan benefit amount to calculate your PBGC benefit.

Your November 1, 2002 form-letter appeal said that (1) PBGC did not provide you with sufficient information on the analysis that underlies the determination, and (2) without such information, it is difficult for you to know whether errors not apparent to you were made. Our *Discussion* below addresses those issues, and the other issues you raised.

**Discussion**

1. Request for Additional Information

Because your appeal requested more information about your benefit calculation, the Appeals Board sent your request to PBGC's Disclosure Officer and informed you in a letter dated November 29, 2002 that you had the option of supplementing your appeal within 30 days after his response. PBGC records show that the Disclosure Officer responded to your request on January 30, 2003 with copies of the documents in your personal PBGC file. One of those documents shows how your Plan benefit was calculated. See

<sup>1</sup> Your MCRLA provides a benefit for the rest of your life. Also, because the Plan's former sponsor made special contributions on your behalf, your beneficiary will receive a benefit if you die before you receive pension payments equal to the special contributions balance.

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Enclosure 1. The Appeals Board has not received any supplemental correspondence from you.

2. Calculation of Your Plan-Defined Benefit and Your PBGC Benefit

After the Plan terminated on January 1, 2001, PBGC personnel conducted an audit of the procedures TWA used in administering the Plan and calculating participants' Plan-defined benefits. After calculating benefits for a sampling of participants and comparing the results with the amounts that TWA calculated and stored in TWA's pension database, PBGC auditors concluded that the benefit amounts in TWA's database were reliable. So, in most cases and in your case in particular, PBGC accepted TWA's calculations, and then adjusted them to account for limitations on benefits set by Congress under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Documents in PBGC files reveal that the Plan did not have sufficient assets when it terminated on January 1, 2001 to provide all benefits that PBGC guarantees under ERISA. As a result, the provisions of the Plan, ERISA, and PBGC's regulations and policies determine the amount of:

- your guaranteed benefit,
- your ERISA § 4044 benefit, and
- your ERISA § 4022(c) benefit.

Enclosure 2 shows how PBGC calculated these benefit amounts, and the changes made by the Appeals Board.

3. Federal Litigation

Your appeal includes claims that are being litigated against PBGC and other parties in two federal courts. The plaintiffs in the court cases allege among other things that the Plan was improperly terminated under ERISA. The form letter says that you are raising these issues in order "to ensure that all my rights with respect to the issues in contention in those litigations are fully preserved."

By way of background, Carl Icahn was the former controlling shareholder of TWA. TWA filed a bankruptcy petition in 1992 in the Bankruptcy Division of United States District Court for the District of Delaware. One of the issues involved in the bankruptcy was the status of TWA's underfunded pension plans, and the extent of Carl Icahn's liability, if any, in the event the plans terminated. Among other things, Mr. Icahn conditioned his willingness to provide TWA with a \$200 million loan (which was

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necessary for TWA to survive and emerge from bankruptcy) upon some provision that fixed the amount of liability that he might incur towards the pension plan. Throughout these proceedings, the interests of the retired and active pilots were represented by the Air Line Pilots Association (ALPA).

On January 5, 1993, TWA, ALPA (and other unions that represented TWA employees), and PBGC signed a "Comprehensive Settlement Agreement" (CSA) under which: (1) Carl Icahn loaned TWA \$200 million; (2) an Icahn-owned concern called Pichin Corp. took over sponsorship of the TWA Pension Plans, and agreed to become responsible for any minimum funding costs of the Plans that were not covered by a \$300 million payment guaranteed by TWA; (3) it was agreed that the Plans would terminate if certain events occurred after 1993; and (4) if the Plans were thereafter terminated by PBGC, it was agreed that Icahn would pay PBGC \$240 million dollars. The Bankruptcy Court approved the CSA, and it was later incorporated in a Plan of Reorganization approved by the Bankruptcy Court. Neither ALPA nor any other party took an appeal from that decision, which became final and binding.

The TWA Pension Plans terminated in 2001. Even though ALPA was one of the parties that negotiated and signed the CSA, it filed a suit to stop the termination and void the settlement agreement. Judge Ricardo Urbina of the United States District Court for the District of Columbia dismissed the case on March 29, 2002.<sup>1</sup> Following the merger of TWA and American Airlines, the Allied Pilots Association assumed representation of former TWA pilots and appealed Judge Urbina's ruling to the U.S. Court of Appeals for the D.C. Circuit.

On July 11, 2003, the Court of Appeals issued its decision affirming Judge Urbina's decision. The Court of Appeals held that the termination was lawful under ERISA and that the CSA was a valid exercise of PBGC's statutory settlement authority.<sup>2</sup>

Between the two decisions, on May 15, 2002, eight former TWA pilots filed another lawsuit challenging the termination, also in Washington, D.C. The judge postponed litigation in the second case until the appeal of the first case was decided. On September 8, 2003, the plaintiffs filed an amended complaint and a request for a writ of mandamus. PBGC's response is due in November 2003.

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<sup>1</sup> A copy of Judge Urbina's decision (<http://www.dcd.uscourts.gov/00-3113.pdf>) is available on the court's website (<http://www.dcd.uscourts.gov/>).

<sup>2</sup> The Court of Appeals decision is available on the court's web site at (<http://pacer.cadc.uscourts.gov/docs/common/opinions/200307/02-5144a.pdf>).

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While your appeal briefly summarizes the claims in these cases, it does not identify any errors in PBGC's determination of your PBGC benefit based on (1) your personal data, (2) the Plan's provisions, or (3) ERISA provisions, given the Plan's actual status as a terminated, PBGC-trusteed plan. Please note that the Appeals Board does not have the authority to decide whether the Plan's termination was proper, or to change the termination date. In any event, the Board declines to decide the claims that are in litigation.

### **Decision**

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board changed PBGC's determination by increasing your monthly PBGC benefit payable as a Modified Cash Refund Life Annuity starting on May 1, 2001 from \$1,848.67 to \$1,853.36.

This decision is the agency's final action regarding your appeal. You may, if you wish, seek court review of this decision.

PLEASE NOTE that PBGC will always, even after an appeal is closed, consider any new, specific evidence that you present showing you may be entitled to a higher benefit. If you have or obtain any such evidence, please send it to PBGC, Attn: Insurance Operations Department, Trusteeship Processing Division #1, P. O. Box 151750, Alexandria, Virginia 22315-1750. If you need more information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis  
Appeals Board Member

Enclosures (3)