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

MAY 31 2004



Re: Case 194025, Trans World Airlines, Inc.
(TWA) Retirement Plan for Employees (the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's December 12, 2003 determination of your benefits from the Plan. For the reasons stated below, the Board granted your appeal by finding that PBGC should recalculate your benefit as if you had been continuously employed by TWA at your regular salary rate until April 19, 1993 in accordance with your Arbitration Award.

As a result of the Board's finding, PBGC's Insurance Operations Department (IOD), the office responsible for issuing benefit determinations, will send you a corrected determination letter, which will include a new 45-day right to appeal.

Determination and Appeal

PBGC determined that you were entitled to a monthly benefit of \$68.50 from the Mechanics Plan (IAM Plan) starting on October 1, 2020 and a monthly benefit of \$185.60 from the Flight Attendants Plan (IFFA Plan) starting on October 1, 2015. PBGC told you that the benefit amounts are payable in the form of a Straight Life Annuity, which provides a monthly benefit for your lifetime and no survivor benefits. PBGC's letter also informed you that when you decide to start receiving your benefits, PBGC would send you information about other benefit forms available to you.

The determination letter also noted that you could start receiving your benefits either before or after the commencement dates shown above, and that the monthly benefit amounts would be decreased if you choose earlier commencement and increased if you choose later commencement. With the letter, PBGC included a Benefit Statement showing data used to calculate your benefit and also showing that PBGC had accepted the monthly Plan benefit

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amounts that TWA calculated.

In your December 22, 2003 letter to the Appeals Board, you stated your appeal issue as follows:

"... TWA wrongfully and fraudulently terminated me in 1989. I went to arbitration on the matter and won. The decision copy is enclosed. They breached their own contract and took nearly '4 years' to get the arbitrator to complete a decision in which I was offered 'full back pay'. To this day they have refused to pay me and are even trying to use bankruptcy as a way out. (It won't work - employees' back pay is payable 100%).

However the award will show I was not notified of the full back pay until October 28, 1992, and wasn't actually offered my job back until April of 1993. They still owe the pension amount that goes along with the back pay."

At the request of the Appeals Department, PBGC's IOD responded to your December 22, 2003 letter on March 26, 2004. IOD's letter told you that the records PBGC received from TWA show "a termination date of 10/11/1989" and that there "is no documentation in your file that indicates that your employment was reinstated. We also do not have a record of any wages payable to you between the date of termination of employment and the plan freeze date in 1992."

Your April 3, 2004 appeal letter restated the claims of your December 22, 2003 letter. You also noted a typographical error (4/9/1989) in PBGC's December 22, 2003 response.

Discussion

PBGC provides pension insurance according to the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan subject to limitations set by Congress under ERISA.

Section 1.2(h) of the IFFA Plan's governing document defines earnings as follows:

- (1) "(h) 'Earnings' means the regular compensation paid to an Employee by the Company, including deferred regular monthly compensation contributed to a Code Section 401(k) cash or deferred plan, before deductions or withholding, excluding contributions by the Company to this or any other benefit plan; provided, however, that effective for Plan Years beginning on or after January 1, 1989, Earnings in excess of \$200,000 shall be disregarded. Such amount shall be adjusted at the same time and in such manner as permitted under Code Section 415(d). Notwithstanding the foregoing, compensation paid or accrued after December 31, 1992 shall not be taken

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into account under the Plan."

Section 1.2(m) of the IFFA Plan's governing document defines an hour of service as follows:

- "(m) 'Hour of Service' means each hour— ...
- (2) for which back-pay irrespective of mitigation of damages is either awarded an Employee or agreed to by the Company; ..."

Paragraphs 1 and 2 of the Arbitration Award you submitted (Enclosure 1) indicate that your grievance regarding your discharge was "sustained" by the three-member arbitration panel's Neutral Referee, with one member dissenting and the other concurring. Paragraphs 3 and 4 of the Arbitration Award clearly state that you "shall be reinstated to the position of Flight Attendant without loss of contractual benefits" and that you "shall be reimbursed for all wages lost between the date of (your) removal from active duty and (your) reinstatement pursuant to this award."

Despite the explicit statements in Paragraphs 3 and 4 of the Arbitration Award, however, its Paragraph 5 says that you "shall be entitled to the remedial provisions of this award only so long as (your) seniority would otherwise have retained (you) on the active payroll." It is unclear from the electronic and paper data PBGC received from TWA why Paragraph 5 was included in the text of the award. It would seem to have been a simple matter to determine at the time of the award whether your seniority would otherwise have retained you on the active TWA payroll at the time of your discharge.

Enclosure 2 is a copy of electronic data that PBGC received from TWA when the Plan terminated. Page 2 of Enclosure 2 shows that you were furloughed from your IAM Plan position on October 30, 1983, and were rehired with a "seniority bridge" from furlough status on April 15, 1985 as a Cabin Attendant. Page 2 also shows four consecutive entries for "Discharge" on October 5, 1989, October 11, 1989, October 12, 1989, and April 19, 1993.

The Appeals Board noted that it was TWA's consistent practice to specify a "Furlough" entry when an employee's seniority would not retain the employee on TWA's active payroll. The Board noted that if your seniority would not have retained you on TWA's active payroll on October 5, 1986, there would have been no need on TWA's part to discharge you. That is, TWA could have simply put you on furlough at that time. For that reason, the Board decided that Paragraph 5 of the Arbitration Award does not prevent you from receiving the remedial benefits of the Arbitration Award.

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The Appeals Board also found that while the Arbitration Award required TWA to reinstate you as a Flight Attendant and give you back pay, nothing in the award required you to accept reinstatement in order to receive the back pay that the Arbitration Award gave you for the period between your discharge date and the date on which TWA offered you reinstatement. The Appeals Board found nothing in the records that TWA gave PBGC regarding whether or when TWA offered you reinstatement. You indicated in your December 2003 letter that TWA offered you reinstatement in April of 1993. Since the last discharge entry in TWA's electronic records is in April of 1993, the Appeals Board has decided to accept your claim in that regard.

As a result, the Appeals Board found that your benefits under the Plan should be recalculated to include the service you would have earned and the salary you would have earned from October 1989 through the Plan's freeze date (December 31, 1992) as if you had not been discharged.

Decision

Having applied Plan provisions and the Arbitration Award to the facts in this case, the Appeals Board granted your appeal by finding that PBGC should recalculate your benefit as if you had been continuously employed by TWA at your regular salary rate until April 19, 1993 in accordance with your Arbitration Award.

When PBGC's IOD receives a copy of this decision, IOD will send you a corrected determination letter consistent with this decision, which will include a new 45-day right to appeal. In the meantime, 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 (2)