



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

SEP 06 2004

Re: [redacted] Case 194025, Trans World Airlines, Inc.
(TWA) Retirement Plan for Employees - Flight Attendants
(the IFFA Plan)

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's July 31, 2003 determination of your benefit from the IFFA Plan. For the reasons stated below, the Board granted your appeal by finding that PBGC should recalculate your pension benefit so as to credit you with the benefit you would have earned had you not been absent from work due to TWA's weight program in accordance with the 1995 Settlement Agreement signed by the Equal Employment Opportunity Commission (EEOC), TWA, and the International Federation of Flight Attendants (IFFA).

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 new determination of your PBGC benefit.

Determination and Appeal

PBGC determined that starting on your Actual Retirement Date (ARD = July 1, 2001), you were entitled to a regular monthly benefit of \$390.35 payable as a Joint and 50% Survivor Annuity (J&50%SA), which provides a benefit for your lifetime and if you die first, your eligible spouse will receive a monthly benefit equal to one-half of that amount for the rest of his life. PBGC determined that you were also entitled to a temporary supplement of \$205.25 from age 60 to age 62. PBGC included a Benefit Statement showing data that was used to calculate your benefit and also showing that PBGC accepted the monthly IFFA Plan benefit amount that TWA calculated.

Your August 25, 2003 appeal letter stated as follows:

"My former Company, TWA, failed to reinstate the retirement credit that I was entitled to as a result of a Lawsuit settlement brought by the EEOC against TWA. It was regarding a 'Weight Program' or 'Appearance Standard Program' settled in 1992 that I was involved in.

The period in question is August 1990 through August 1992. After the settlement, TWA had improperly listed my absence as a 'Personal leave' and never reinstated the time in my retirement credits as instructed by the Federal Courts. Therefore the figures reported to the PBGC by My Former Plan Administrator were flawed and incomplete, causing the incorrect calculation of my Pension Benefits.

In 2000 I asked Marsha Duncan in the TWA Retirement Department to correct this error before she submitted my records to the PBGC and was told that 'it was too late and after all it was only a small amount of time and would not matter', but it does matter to me, as this is all the pension I have to live on in my retirement years."

You included a "Letter of Explanation" of the five items of evidence you enclosed with your appeal letter. You described the evidence as

- (1) "Notice of Proposed Settlement of Class Action and Fairness Hearing and Right to make a claim;"
- (2) "All the names of Los Angeles-based Flight Attendants that were on the weight program;"
- (3) "1990 Lost Time Tracking Record;"
- (4) "Letter of Seniority Adjustments;" and
- (5) "Updated Seniority by American Airlines."

Discussion

1. **Background**

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.

Records available to the Appeals Board reveal that the IFFA Plan terminated on January 1, 2001 and that PBGC became trustee of the IFFA Plan on January 2, 2001. The records also show that you were actively employed by TWA when the IFFA Plan terminated.

2. **Pertinent Plan Provisions**

"Continuous Employment" is defined in IFFA Plan § 3.1. With respect to service before January 1, 1976, the IFFA Plan credits you with Continuous Service in years and completed months of full-time continuous service with TWA. With respect to service on and

after January 1, 1976, the IFFA Plan credits you with one year of Continuous Service for each year of employment with TWA during which you completed 2,340 Hours of Service. Section 3.1 specifically excludes from Continuous Service any period of time during which you were absent from work due to a personal leave of absence or medical leave and were not on TWA's payroll.

Section 1.2(h) defines "Earnings" as the regular compensation paid to an Employee of TWA.

The amount of a participant's regular monthly retirement benefit payable at normal retirement date is defined in IFFA Plan § 5.1. Section 5.1 says that your regular normal retirement benefit is the sum of your Past Service Benefit and your Future Service Benefit. Your Past Service Benefit is your accrued benefit under the Prior Plan as of July 31, 1981. Your Future Service Benefit is equal to one-twelfth of 2 percent of your Earnings while a Flight Attendant on and after August 1, 1981 and before January 1, 1993. Thus, the amount of your regular normal retirement benefit is not affected by the specific number of years of Continuous Service with which you were credited after July 31, 1981, but rather by your earnings during that period.

Section 5.2 of the IFFA Plan provides the formula for calculating the temporary supplement payable between ages 60 and 62 to all participants who earned at least ten Years of Continuous Employment. It states that the temporary supplement is equal to 50 percent of your normal retirement benefit payable as a temporary Straight Life Annuity, which means that your survivor does not continue receiving the supplement if you die before age 62. Thus, the amount of your temporary supplement, like your regular normal retirement benefit, is not affected by the number of years of Continuous Service with which you were credited after July 31, 1981.

2. The Settlement Agreement

The Appeals Board reviewed a copy of the Settlement Agreement and Consent Decree that was filed with the federal district court for the Central District of California on October 31, 1995, as well as the "Notice of Proposed Settlement of Class Action and Fairness Hearing and Right to Make a Claim" that you included with your appeal.

Paragraphs 8 and 11 of the Settlement Agreement deal with the issue of pension credit as follows:

"8. None of the Individuals accepting reinstatement under this Decree will be entitled to

back pay for any matter addressed in this case. Each flight attendant who accepts TWA's offer for reinstatement will be provided with restoration of company and line seniority, including the period from the date of termination or separation until the date of reinstatement. In addition, each returning flight attendant will be entitled to restoration of up to two (2) years lost pension credit for the period he or she was terminated or separated and did not receive such credit. To the extent that any individual accepting TWA's offer for reinstatement had time left in his or her sick bank at the time of separation or termination, that sick time will be restored. Individuals accepting reinstatement will also be permitted to purchase vacation from TWA up to the number of vacation days that, had they been in active service during the entire preceding calendar year, they would have been eligible to take in the year in which reinstated, based on their seniority with TWA. TWA, in conjunction with IFFA, will develop a procedure for purchasing such vacation, consistent with operational needs. Reinstated individuals will not be entitled to any relief not specifically set forth in this Decree."

"11. Any individual who was suspended under the weight program or placed on a mandatory appearance leave of absence due to weight since November 1, 1986 will have company and line seniority restored for the period he or she was suspended or on a mandatory appearance leave of absence. In addition, that individual will be entitled to restoration of up to two (2) years lost pension credit for the period he or she was suspended or was on the appearance leave and did not receive such credit. The Company will confirm, in writing, his or her seniority and pension benefits under this Decree. . . ."

Because the Settlement Agreement did not define the terms "pension credit" and "lost pension credit" and specifically awarded no back pay, the Appeals Board reviewed files obtained from TWA, but found no evidence of how TWA applied these terms when performing benefit calculations for other IFFA participants in accordance with the 1995 Settlement Agreement. As noted above, PBGC accepted the normal retirement benefits calculated by TWA for IFFA Plan participants.

The Appeals Board, therefore, contacted individuals involved with the 1995 Settlement Agreement regarding their interpretation of the term "pension credit." An attorney whose law firm represented IFFA said that it was his recollection that earnings for up to two years of service were to be imputed for purposes of recalculating an IFFA participant's benefit under the Settlement Agreement. An attorney who signed the Settlement Agreement on behalf of TWA said that he did not know what was meant by the term "pension credit." The attorney who signed the Settlement Agreement on behalf of the EEOC explained that, while the parties did not concentrate on the meaning of the term "pension credit," the intention of the Settlement Agreement was to make the Flight Attendants who were suspended whole.

Decision

Based on the above, the Appeals Board decided that PBGC should recalculate your benefit as if you had been continuously employed by TWA at your regular salary rate from August 14, 1990 until August 4, 1992, in accordance with the 1995 Settlement Agreement.

When PBGC's IOD receives a copy of this decision, IOD will send you a corrected determination letter, 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,

A handwritten signature in cursive script that reads "Michel Louis".

Michel Louis
Appeals Board Member