



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

January 27, 2005

Re: [redacted]

Eastern Airlines, Inc. Fixed Benefit Retirement Income
Plan for Pilots (the "Plan")

Dear [redacted]

The Appeals Board has reviewed your October 12, 1998 appeal of PBGC's determination of [redacted] benefit. We apologize for the delay in responding to your appeal.

As explained below, we are denying your appeal by finding [redacted] disability benefit is not in PC3.¹ However, PBGC has determined [redacted] will continue to receive the \$1,771.48 per month benefit he is currently receiving, and he will not be required to repay his past overpayments.

PBGC's Determination

PBGC's August 30, 1998 letter explained [redacted] Plan disability benefit is \$3,212.06 per month, the same as Eastern paid. PBGC found:

- [redacted] sick leave was exhausted November 15, 1987, and
- Because the Plan's termination date was less than 3 years later, October 5, 1990, [redacted] disability benefit did not fall into PC3. Instead, the non-guaranteed portion of his disability benefit is in PC5.

Under an ALPA-PBGC Settlement Agreement, PBGC would pay [redacted] 34% of his PC5 benefit. Therefore, PBGC calculated [redacted] PBGC benefit as \$1,759.28 per month, and his overpayment balance through December 31, 1998 as \$17,029.75.

Your Appeal

You noted the Plan's disability pension starts after sick leave has been exhausted. Thus, the Plan incorporates the sick leave rules under Eastern's contract with ALPA (the "Contract").

You claim that under the Contract:

- (i) [redacted] should have been allowed to use sick leave instead of scheduled vacation leave in 1986 and 1987,

¹ Priority Category 3 defined in ERISA section 4044(a)(3)

(ii) He should not have earned sick leave while being paid sick leave, and

(iii) Even if the Contract required sick leave accruals while on sick leave, [] accrual rate after August 1986 should have been 1½ days instead of 3 days per month.

If Eastern had followed the Contract, you argue, [] sick leave would have ended before October 1987. You conclude [] is eligible for a fully-funded PC3 benefit.

Data Relevant to Your Appeal

| | |
|--|------------------------|
| Start of [] first extended sick leave: | 10/20/1984 |
| Sick leave balance on 10/31/1984 (Exhibit 4 page 1 of your appeal): | 185½ hours |
| Final sick leave accrual rate: | 3 days per month |
| Date final 3-day accrual rate started: | 3/31/1985 ² |
| Date [] returned to work (on training, Exhibit 4 page 10): | 4/03/1985 |
| Largest post-4/03/1985 sick leave balance, on 7/31/1986 (Exhibit 4 page 34): | 156½ hours |
| Last day of work: | August 1986 |
| Date paid sick leave was exhausted: | 11/15/1987 |
| Date disability pension started: | 12/01/1987 |

Converting Paid Vacation to Sick Leave

You cite a Contract provision for charging sick leave to a pilot who cannot fly "while on sick leave."³ You have only described a consequence if [] had been on paid sick leave. You have not demonstrated any requirement for converting scheduled vacation to paid sick leave. Therefore, the Board denied your request that 1986 and 1987 paid vacation be converted to paid sick leave.

² 3/1/85 sick leave balance 138½ - 15 + 3 = 126½ days on 3/31/85. See pages 7 and 9 on your Exhibit 4.

³ Your Exhibit 5, section 38(D), page 160

Sick Leave Accrual Rate

You asked the Appeals Board to change how Eastern applied to [] the following Contract provision:

"A pilot shall be credited with one and one third (1⅓) days of sick leave for each month of service with Eastern. . . . When a pilot *returns to duty* after an extended sick leave that reduces his sick leave balance by thirty (30) days or more, he shall be credited with three (3) days of sick leave for each month of service thereafter until his accumulated sick leave is restored to the extent used to the balance that existed immediately prior to the period of extended sick leave."
(italics added)

Your arguments below for changing sick leave accrual rates depend on the meaning of "service." Service is not defined in the Contract, but is defined in the Plan document.

Service for Earning Sick Leave Includes Paid Sick Leave

Your appeal equates the Contract's term "service" with "work." Since [] was not working while absent on paid sick leave, you argue he was not earning the service needed to accrue sick leave.

Contrary to your interpretation of "service," the Plan defines Active Service to include "sick leave with pay."⁴ Similarly, an unsigned 1986 ALPA-Eastern agreement defines Active Status to include employees on paid sick leave. See Enclosure 2. Further, Eastern granted sick leave accruals to [] and another participant who submitted flight logs to PBGC. Thus, other relevant documents and Eastern's practices indicate paid sick leave is service used to accrue sick leave. Therefore, the Board will not change Eastern's practice of including paid sick leave in the service used to earn sick leave.

Contract Plainly Required Final 3-Day Accrual Rate

You have agreed that in Spring 1985 [] satisfied the Contract's requirement for the 3-day accrual rate to "return to duty." The Contract then required continuing the 3-day accrual rate "thereafter" until his approximately 185-hour sick leave balance was restored. However, [] sick leave balance never again approached 185 days. See the table above. Thus, the Contract plainly required continuing the 3-day accrual rate from Spring 1985 until [] retirement, the same as Eastern granted.

⁴ Plan section 1.2(i). See Enclosure 1.

Argument for Reducing Sick Leave Accruals While on Sick Leave

You have questioned the plain reading of the Contract we applied in the paragraph above. Under the plain reading, after 30 days on sick leave a participant could increase his accrual rate from 1½ days to 3 days by returning to duty for only 1 day. You describe this result as "bizarre." You propose instead that the 3-day rate applied only while a participant was working.

We rejected your "bizarre result" argument for the following 3 reasons:

- The Board found no ambiguity in the Contract's requirement that after activation, the 3-day per month accrual rate continues "thereafter until his accumulated sick leave is restored. . . ."
- Even if under the plain reading of the contract it was bizarrely easy to trigger a 3-day accrual rate, the more reasonable contract reinterpretation would be to apply the 3-day accrual rate automatically after 30 days on sick leave without requiring any return to work. Thus, the more reasonable remedy would be the opposite of what you propose.
- Even if the contract were ambiguous as to which accrual rate applies, or if the Contract could have been written differently, the Board must defer to the contemporaneous interpretations of the responsible parties:

(1) Eastern granted the same 3-day sick leave accruals while on sick leave to another participant who submitted flight logs to PBGC.

(2) We found no evidence that ALPA or [] disagreed with Eastern granting 3-day per month sick leave accruals while on sick leave, even when [] was carefully planning his disability retirement. Please see Enclosure 3.

Therefore, the Board decided not to change how Eastern applied the Contract's sick leave accrual rules to []

Recoupment


PBGC has decided not to reduce [] current \$1,771.48 estimated benefit and not to seek repayment of his past overpayments. He will not be required to repay his overpayments.

Decision

Having applied Plan and Contract provisions to the facts in this case, we are denying your appeal. However, PBGC will continue paying [] \$1,771.48 per month.

This letter concludes [redacted] administrative remedies with respect to PBGC's August 30, 1998 determination. He may, if he wishes, seek court review of PBGC's determination with respect to the issues you raised. If you or [redacted] have any questions about his benefit, please contact PBGC's Authorized Plan Representative at 1-800-400-7242 extension 2200. Thank you for your patience while we carefully reviewed your appeal.

Sincerely,



William D. Ellis
Appeals Board Member

Enclosures:

- 1) Excerpt from Plan document effective January 1, 1985 (4 pages)
- 2) Excerpt from unsigned ALPA-Eastern agreement negotiated in 1986 (5 pages)
- 3) [redacted] attorney's September 23, 1987 letter to Eastern (2 pages)

cc: