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

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DEC 19 2003



Re: Appeal No. [redacted] Trans World Airlines, Inc. (TWA)
Retirement Plan for Pilots (the Plan)

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's December 31, 2002 determination of your PBGC benefit. For the reasons stated below, the Appeals Board changed PBGC's determination by increasing your monthly PBGC benefit starting on your Actual Retirement Date (May 1, 2001) from \$1,506.36 to \$1,640.66 payable as a Modified Cash Refund Life Annuity (MCRLA)¹.

Determination and Appeal

PBGC determined that you were entitled to a PBGC benefit of \$1,506.36 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 January 17, 2003 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 February 12, 2003 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 March 5, 2003 with copies of

¹ 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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decrease my monthly benefit by more than the \$300.00 monthly payment to the Alternate Payee.

The basis for that understanding was illustrated by your own actuary who determined that the \$300.00 monthly payments, if started immediately, would be equal to a stream of payments worth \$542.93 if started at my normal age 60 retirement date. If my normal age 60 retirement benefit of \$2,670.88 was reduced by that amount, the resulting figure of \$2,127.95 would still have been above the PBGC Maximum Insurance Limit at age 60."

Stated a little more precisely, your accrued benefit of \$2,670.88 is the monthly amount of your accrued benefit payable as an MCRLA beginning at your normal retirement age (age 60) and payable for your lifetime. Because Section 6 of the QDRO specifies that the \$300 monthly benefit is to be paid to the Alternate Payee for her lifetime, the monthly \$300.00 amount must be adjusted actuarially to account for the difference in your ages before being subtracted from your accrued benefit amount. Based on your age, the Alternate Payee's age, and the Plan's definition of actuarial equivalence², a \$300 monthly benefit starting on May 1, 2001 payable for the Alternate Payee's lifetime is actuarially equivalent to a monthly benefit of \$542.93 starting at your age 60 payable for your lifetime. Thus, PBGC determined that before application of PBGC limitations, your benefit payable under the QDRO was equal to \$2,127.95 (\$2,670.88 minus \$542.93).

The Appeals Board found, however, that PBGC missed one step in the calculation of your benefit under the QDRO. That is, because your full retirement benefit of \$2,670.88 was not only payable at age 60 but also fully payable at your ARD (May 1, 2001), PBGC failed to credit you with the full subsidy that you earned by working more than thirty years for TWA. PBGC's calculations reflect the fact that the subsidy payable on the \$542.93 portion of your accrued benefit is not payable to the Alternate Payee under the terms of the QDRO, and therefore, you retained the subsidy you earned on the portion payable to the Alternate Payee.

The calculations required to restore the subsidy are simplified by the fact that you and the Alternate Payee began receiving your benefits on the same day. Based again on the Plan's definition of actuarial equivalence, the value of your full

² Based on the Plan's definition of actuarial equivalence, the present value factor (PVF) of an immediate annuity for a 49-year-old spouse is 147.4798, while the PVF of an annuity deferred to age 60 for a 55-year-and-7-month-old participant is 81.4917. Therefore, \$300.00 per month payable immediately to the Alternate Payee starting on May 1, 2001 for her lifetime is actuarially equivalent to a deferred annuity of \$542.93 (\$300.00 x 147.4798 + 81.4917) per month starting at your age 60 and payable for your lifetime thereafter.

retirement benefit starting on May 1, 2001 was \$339,762,³ while the value of the Alternate Payee's benefit was \$44,244.⁴ Therefore, the value of your retained interest was \$295,518 (\$339,762 - \$44,244), which provides you with a monthly benefit of \$2,317.67⁵ payable as an MCRLA under the QDRO.

The Maximum Guaranteed Benefit (MGB) limit applies to the entire retirement benefit payable on your behalf under the Plan. Enclosure 2 explains that the monthly MGB limit that applies to your full retirement benefit is \$1,581.38, and that the ERISA § 4022(c) benefit that applies to your full retirement benefit is \$309.31 per month, which means that PBGC is allowed to pay \$1,890.69 (\$1,581.38 + \$309.31), or 70.7890% (\$1,890.69 ÷ \$2,670.88) of your full retirement benefit of \$2,670.88.

Applying this percentage to your corrected benefit under the QDRO, the Appeals Board found that your PBGC benefit is \$1,640.66 (\$2,317.67 × 70.7890%) per month payable as an MCRLA.

4. Federal Litigation

Your form-letter 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

³ The Plan's factor for changing your \$2,670.88 benefit payable as MCRLA to a benefit payable as a Straight Life Annuity with no death benefit (SLA) is 1.006914. So, your full accrued benefit is equivalent to \$2,689.35 payable as an SLA. Based on the Plan's definition of actuarial equivalence, the present value factor (PVF) of an SLA starting immediately for a 55-year-and-7-month old participant is 126.336, and 126.336 × \$2,689.35 = \$339,762.

⁴ As noted in an earlier footnote, the PVF of an immediate annuity for a 49-year-old spouse is 147.4798, and 147.4798 × \$300.00 = \$44,244.

⁵ As noted in an earlier footnote, the PVF of an immediate annuity for a 55-year-and-7-month old participant is 126.336. Dividing the value of your retained benefit by the PVF results in a monthly benefit of \$2,339.14 (\$295,518 ÷ 126.336) payable as an SLA. The Plan's factor for changing the \$2,339.14 benefit payable as SLA to a benefit payable as an MCRLA is 1/1.009265. So, your retained benefit under the QDRO is equal to \$2,317.67 (\$2,339.14 × 1/1.009265) per month payable as an MCRLA.

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 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 plans. 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 Plan's 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, 2002.⁶ 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.⁷

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,

⁶ 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/>).

⁷ The Court of Appeals decision is available on the court's website at (<http://pacer.cadc.uscourts.gov/docs/common/opinions/200307/02-5144a.pdf>).

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2003, the plaintiffs filed an amended complaint and a request for a writ of mandamus. PBGC's response was due in November 2003.

While your form-letter 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-trusted 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 the Appeals Board increased your monthly PBGC benefit payable as a Modified Cash Refund Annuity starting on May 1, 2001 from \$1,506.36 to \$1,640.66. This decision is the agency's final action regarding your appeal. You may, if you wish, seek court review of this decision.

We will forward a copy of this decision to PBGC's Insurance Operations Department, the office charged with issuing benefit determinations, and they will adjust your monthly benefit, and recalculate the amount of any overpayments and underpayments.

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)

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