



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

JUN 13 2005

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

Dear

The Appeals Board reviewed your appeal of PBGC's November 7, 2003 determination of your benefit under the Non-Contract Plan. As explained below, we must deny your appeal.

*Benefit Determination and Appeal*

PBGC determined that you are entitled to a monthly PBGC benefit starting on your Actual Retirement Date (June 1, 2001) of \$320.67 payable as a Joint and 50% Survivor Annuity, which provides a benefit for your lifetime, and if you die first, your eligible spouse will receive one-half of your benefit amount for her remaining lifetime thereafter. PBGC included a Benefit Statement, which showed some of the data used to calculate your benefit and also showed that PBGC had accepted the monthly accrued benefit amount that TWA calculated.

Your December 9, 2003 appeal letter stated that your pension benefit of \$104.46 for your first period of service from March 6, 1978 to February 24, 1984 should be adjusted to reflect 5.83333 years of service based on a December 19, 1988 letter from Robert Allen, who at that time was a Senior Vice President of Employee Relations for TWA. Your letter also suggested that your pension benefit for your first period of service should be calculated using your final average earnings from your second period of service (\$8,333) rather than your final average earnings from your first period of service (\$3,613).

In accordance with established practice, your December 9, 2003 appeal letter was referred to PBGC's Benefit Administration & Payment Department (BAPD) for an explanation. BAPD's March 26, 2004 letter explained that your first period of "Credited Service" started on your membership date. BAPD included a copy of the "Application for Membership" form that you signed on November 6, 1981. PBGC's letter also explained that your total accrued benefit

under the Non-Contract Plan is calculated in two pieces, the first equal to the accrued benefit attributable to your first period of service and the second equal to your accrued benefit attributable to your last period of service. BAPD's letter also said that you had an additional 30 days to file an appeal if you still did not agree with PBGC's determination.

Your April 2, 2004 appeal said that PBGC misapplied the December 19, 1988 letter from Mr. Allen. Your appeal letter also stated that you were unable to find any Plan "provision that provides for use of a Final Average Monthly Compensation based only on my compensation during the 1<sup>st</sup> Employment Period and not based on my compensation during my final employment period."

### *Discussion*

#### 1. Your Prior TWA Service

Your appeal letter quoted the following portion of Mr. Allen's letter:

"You will automatically become a member of TWA's Retirement Plan for Noncontract Employees with annuity benefit accrual credit for your prior TWA service."

You suggested that the above sentence gives you "annuity accrual credit" for all of your prior TWA service.

Section 1.2(kk) of the Non-Contract Plan, on the other hand, provides as follows:

"Years of Plan Service' means all Service, beginning with the earlier of the Member's Plan membership date or the January 1 or July 1 following completion of one Year of Service, and ending not later than December 31, 1992. If the Employee did not join the Plan on or prior to July 1, 1970, Service between July 1, 1970 and his Plan membership date will be excluded. . ."

Based on the above provision and because you did not join the Plan on or prior to July 1, 1970, both TWA and PBGC gave you credit for the portion of your Service from March 6, 1978 through February 24, 1984 that the Non-Contract Plan allows to be used for "annuity benefit accrual," namely, the portion of your Service from your Plan membership date (January 1, 1982) through February 24, 1984. PBGC is not authorized under the Employee Retirement Income Security Act of 1974, as amended, to guarantee or pay benefits larger than those provided under the Non-Contract Plan's provisions.

2. The Final Average Earnings Used to Calculate the Benefit You Earned During Your First Period of Service

At the time you terminated Service the first time, you had earned less than ten Years of Service. Section 5.1 of the Non-Contract Plan provided that you would become vested in your accrued benefit only after completion of 10 Years of Service.

Section 5.2 of the Non-Contract Plan explains why your prior Service and the portion of your accrued benefit attributable to that Service were not permanently forfeited. It also explains how the portion of your accrued benefit attributable to your first period of Service must be calculated. It provides as follows:

**"Nonvested Termination – Reinstatement of Service. If the Service of a Member terminates prior to his becoming vested pursuant to Section 5.1 or if he is not otherwise vested to any extent pursuant to Section 12.4(a), he shall cease to be a Member and his accrued Normal Retirement Income shall be cancelled. If he is thereafter rehired as an Employee, he shall be credited with his Years of Service before such termination only if –**

- (a) he is rehired before he incurs a One-Year Break in Service; or
- (b) he completes a Year of Service following his rehire and the number of his consecutive One-Year Breaks in Service is less than the number of his Years of Service before termination, or, on or after January 1, 1986, the number of his consecutive One-Year Breaks in Service is less than the greater of (1) five or (2) the number of his Years of Service before termination. Any Years of Service not required to be counted prior to January 1, 1986 shall not be counted for the purpose of this calculation.

**Thereupon, calculation of the Member's Retirement Income for the period of employment prior to his termination shall be based upon the provisions of the Company's Retirement Plan applicable to Noncontract Employees in effect at the time he ceased to qualify as an Employee."**

[Emphasis added.]

So, based on section 5.2 of the Non-Contract Plan, your accrued benefit attributable to your first period of Service was not forfeited because although you incurred five consecutive One-Year Breaks in Service between February 24, 1984 and January 3, 1989, you had earned six Years of (Vesting) Service at the time of your February 24, 1984 termination.

In accordance with the portion of Section 5.2 in bold above, the Plan's provisions regarding the Earnings that are to be used in calculating your accrued benefit attributable to your first period of Service are found in Plan section 4.1(A)(4), which provided as follows:

- "(4) The following provisions shall apply for the purpose of determining the Member's Final Average Monthly Earnings:
- (a) For a Member whose Service terminates or who retires on or after January 1, 1984 and before March 1, 1986:
    - (i) Monthly Earnings for the period commencing January 1, 1984 shall not include the Member's actual Earnings. Such Member's average monthly Earnings for the last consecutive twelve months of Service as an Employee through December 31, 1983 will be used to represent monthly Earnings after December 31, 1983; and ..."

So, based on the provisions of the Plan in effect at the time of your February 24, 1984 termination, your Final Average Monthly Earnings are equal to your average monthly earnings for 1983, for purposes of calculating your accrued benefit attributable to your first period of Service.

Based on Non-Contract Plan section 5.2 and the Plan provisions in effect when you terminated employment on February 24, 1984, the Appeals Board decided that the benefit attributable to your first period of employment must be calculated using the definition of Final Average Monthly Earnings in effect at that time and not the definition of Final Average Monthly Earnings in effect at the time of your second termination.

### *Decision*

Having applied Plan provisions to the facts of this case, the Appeals Board decided that we must deny your appeal. This decision is the agency's final action regarding the issues raised in your appeal. You may, if you wish, seek court review of this decision.

We regret the delay in resolving your appeal and appreciate your patience while we completed our review. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis  
Appeals Board Member