



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

June 19, 2009



Re: Appeal 2008-0450; Case 203570; Pension Plan for Employees of US Airways, Inc. Represented by the International Association of Machinists and Aerospace Workers (the "IAM Plan" or the "Plan")

Dear

This Appeals Board decision responds to your appeal of PBGC's June 18, 2008 determination that you are not entitled to a benefit under the IAM Plan. For the reasons we state below, we changed PBGC's determination by finding that you are entitled to a vested benefit because you earned an additional five years of Vesting Service and Credited Service while you were on furlough from 1991 to 1996. As a result of this decision, PBGC will recalculate your benefit and send you a corrected determination with a new 45-day right of appeal.

PBGC's Determination and Your Appeal

PBGC's determination letter told you that you were not entitled to a PBGC benefit because the IAM Plan required at least 5 years of Service to qualify for a vested pension benefit and you did not meet this requirement. The letter said that you only had 4.2 years of Service. PBGC also determined that, because PBGC paid you estimated monthly benefits, PBGC had paid you \$17,844.97 too much and that your benefits would stop on August , 2008. (We note that PBGC has continued to pay you \$495.22 per month while your appeal has been under review.)

In your June 24, 2008 letter, you said:

I believe your determination to suspend my pension benefits and payback previous payments are totally incorrect for the following reasons:

1. Enclosed is a letter, dated June 1, 2004, from US Airways benefits administration showing my total credited service to date of termination, June , 2004, is 9. years, more than ample time to participate in the Plan. Also is shown the IAM pension calculation of \$495.22 monthly - \$53.06 x 9. years.

In accordance with established PBGC procedures, the Appeals Board referred your June 24 letter to PBGC's Benefits Administration & Payment Department ("BAPD" also

known as the Insurance Operations Department) for a response. BAPD' s July 21, 2008 letter stated:

We have reviewed the information that you provided and have found that the PBGC determination of your benefit is correct. Periods of furlough are not credited for purposes of PBGC's guarantee. Returning to active employment is a condition of entitlement to the benefit, and participants who were on furlough as of 1/10/2005, the date of plan termination, did not satisfy this condition. . ."

Your July 29, 2008 appeal letter stated as follows:

When US Airways decided to close our jet engine shop, a mutual understanding between US Airways management and the IAM Union that stated all active furloughed personnel would continue to accrue seniority and credited service time for retirement benefits as a regular employee. This was the agreement. These were the rules.

History of the Plan's Provisions Regarding the Crediting of Vesting Service and Credited Service While on Furlough

On July 7, 1992, a participant who had been on a medical leave of absence for about 13 years applied for retirement. When US Airways calculated his retirement benefit, it stopped his Credited Service and Vesting Service as of the date he started his leave of absence. The participant filed a grievance ("Grievance 92-"). US Airways negotiated a settlement of Grievance 92- with the union (the "IAM"). **Enclosure 1** is a copy of the settlement of the grievance. We have removed the grievant' s name and other personal information to protect his privacy.

Because Grievance 92- was based on different interpretations of the 1985 Restatement of the IAM Plan, US Airways and the IAM took the opportunity to negotiate the terms under which all other participants on leaves of absences and furloughs would accrue Credited Service during their absence in the future. Thus, the July 29, 1993 Letter of Agreement (Enclosure 1) also specifies how participants like you would accrue Credited Service in the future.

When US Airways adopted the January 1, 1993 Restatement of the IAM Plan, it clearly attempted to incorporate the terms of the July 29, 1993 Letter of Agreement. The 1993 Restatement provides the following provisions relating to the crediting of Service:

(X) **Service** - employment with the Employer determined in accordance with the following rules for the purposes of determining an employee's vesting status:

(1) An employee will be credited with Service in full 1/12^{ths} of a year commencing on his most recent Employment Date and ending on his subsequent Severance Date.

(5) A Severance Date shall not occur and absence from employment shall be counted as Service if the following circumstances apply:

(a) furlough or leave of absence from employment with the Employer if such leave is authorized by the Employer and if the Participant is accruing seniority under the terms of the Agreement (except those employees who elect a voluntary furlough under a voluntary furlough program offered by the Employer, in which case such leave shall not be counted as Service); provided, however, that with respect to a Participant who commences a leave of absence or furlough after July 28, 1993, such continuing Service credit during a period of absence from furlough or leave of absence shall not exceed a cumulative amount of five years; . . .

(b) military leave while the employee's redeployment rights are protected by law;

provided further, that the employee returns to active employment with the Employer when recalled (if furloughed); within 180 days (if leave of absence) or within 90 days after he becomes eligible for release from active duty.

. . .

(Y) **Severance Date** - Severance Date — the earlier of (i) the date on which an employee's retirement, death, or other termination of employment with the Employer occurs or (ii) the first anniversary of the date on which he is absent from work with the Employer as an Employee for any other reason. Notwithstanding the foregoing, however, if an employee retires or dies or his employment otherwise is terminated during a period of his absence from employment for reasons other than retirement or termination, his Severance Date shall be the date of such retirement, death, or other termination of employment. For purposes hereof, termination of employment means the loss of seniority for reasons other than death or retirement.

The July 29, 1993 Letter of Agreement was "confirmed" by a Letter of Agreement dated September 21, 1999. See **Enclosure 2**. Both Letters of Agreement provide for the accrual of Credited Service for up to five years during a furlough and neither Letter of Agreement requires a participant to return to active service after a furlough in order to keep the Credited Service that they accrued during the furlough.

The January 1, 2001 Restatement of the IAM Plan contains essentially the same provisions as the 1993 Restatement. As the result of "restructuring" negotiations in 2002 and 2003, however, US Airways and the IAM agreed that Vesting Service and Credited Service would stop accruing during furloughs as of October 1, 2002. That agreement was signed on January 17, 2003.

Discussion

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

The issue presented by your appeal is whether you had to return to active service with US Airways in order to keep the five additional years of Credited Service that you accrued between 1991 and 1996 while you were on furlough.

Based on our review of the whole record, we have concluded that when US Airways drafted and adopted the 1993 Restatement, it intended to follow the literal terms of the July 29, 1993 Letter of Agreement. This intention is supported by the fact that, when it amended Section 2.1(X)(5) to add phrases regarding furloughs and leaves of absence to the provision that previously mentioned only military leaves, it decided to delete the last sentence of the previous version. That is, before the Plan was amended in 1993, the last sentence of what became the new Section 2.1(X)(5) specifically stated:

If the employee does not return to active employment with the Employer his Severance Date shall be deemed to have occurred and his Service will be deemed to have ceased on the date his absence commenced.

We have concluded that when US Airways amended the Plan in 1993 by deleting that sentence from the end of Section 2.1(X)(5), it thought that it had done all it had to do in order to comply with the July 29, 1993 Letter of Agreement and get rid of the 1985 Plan's requirement of returning to active service.

Further evidence that US Airways intended to follow the literal terms of the July 29, 1993 Letter of Agreement when it adopted the 1993 Restatement is the way it administered those provisions. Based on a very thorough review of Plan practice, we have discovered that US Airways did not require participants who were on furlough to return to active service in order to keep the Credited Service they accrued while they were on furlough regardless of whether their furlough ended when they (1) refused recall; (2) quit their employment; or (3) started receiving their retirement benefits.

Based on the above, we have concluded that, in accordance with the July 29, 1993 and September 21, 1999 Letters of Agreement, the IAM Plan did not require a participant to return to active service in order to retain the Credited Service that the participant accrued while he was on furlough.

Decision

Having applied Plan provisions to the facts of your case, we changed PBGC's determination by finding that you are entitled to a vested benefit because you earned an additional five years of Vesting Service and Credited Service while you were on furlough from 1991 to 1996. As a result of this decision, PBGC will recalculate your benefit and send you a corrected determination with a new 45-day right of appeal. This decision is PBGC's final action regarding your entitlement to a vested benefit under the IAM Plan.

We regret the delay in responding to your appeal and appreciate your patience while PBGC prepares your corrected determination letter. In the mean time, if you need other information about your PBGC benefit, you may call PBGC's Customer Contact Center at

1-800-400-7242 and ask to speak to the authorized representative assigned to the IAM Plan (Case 203570).

Sincerely,

A handwritten signature in black ink that reads "Michel Louis". The signature is written in a cursive style with a large, sweeping initial "M".

Michel Louis
Appeals Board Member

Enclosures (2)