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

JUL 22 2004



Re:  The Grand Union Company Associates'  
Retirement Plan ("Plan"), Case #194132

Dear

The Appeals Board reviewed your appeal of PBGC's September 3, 2003 determination that you are not entitled to a benefit under the Plan. As explained below, the Board changed PBGC's determination by finding that you met the Plan's vesting requirement and you earned 3 years of credited service under the Plan and, thus, you are entitled to a benefit. PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits, will send you a new determination, with a new 45-day right of appeal.

PBGC's Determination and Your Appeal

In various letters, PBGC notified you that PBGC had taken over the Plan and that it would need information from you to help determine your eligibility for a Plan benefit, and asked you to complete and return PBGC's *General Information* form. After reviewing the information you provided and other information in PBGC's files, on September 3, 2003 PBGC sent you its formal benefit determination, which stated you are not entitled to a benefit from PBGC because the Grand Union Plan "required you to have at least 5 years of service in order to qualify for a vested pension benefit. You had only 0.00 years of service as of the date the Plan terminated, January 1, 2001."

In your October 7, 2003 letter of appeal, you said that you met the Plan's 5-year vesting requirement, and noted that your PBGC benefit statement shows you were employed with Grand Union for 7½ years -- from July 19, 1993 to the Plan's January 1, 2001 termination date. You stated that you worked at least 1,000 hours during at least 5 years of your employment with the Company, which was a requirement of the Plan for a vested right to a benefit. You further noted that while you did not work 1,500 or more hours in any year (to earn a full a year of credited service), you are entitled to ½ year of credited service for each of the years 1995 - 2000 (or 3 years of credited service) because you worked at least 1,000 hours during each of these years. To support your claim, you enclosed copies of your Grand Union W-2s for 1995 - 2000, pay stubs showing your hourly wages, and your detailed calculation of the hours you worked based on your earnings.

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By letter dated December 2, 2003, PBGC's Insurance Operations Department ("IOD") responded to your October 7, 2003 appeal, stating that "you had 0 years of vesting service so you are not entitled to a benefit under the Plan." IOD's explanation said that: (1) a Plan participant receives ½ year of service for 1,000 - 1,499 hours worked and a full year for working 1,500 or more hours in a year; (2) an employee is eligible to participate in the Plan on the January 1 or July 1 coinciding with or next following the date (i) he or she reaches age 20 ½, (ii) has worked at least 6 months, and (iii) customarily works 1,000 hours in a year; and (3) you met the Plan's age and service requirements on January 1, 1994; however, "you did not work enough hours in any year to gain even one year of credited service." IOD also said that, because the Plan's definition of compensation for pension purposes may not include all of your W-2 earnings, PBGC relied on the information it obtained from the prior Plan administrator (Grand Union). IOD also gave you 30 days to provide the Appeals Board with additional information if you still believed that your PBGC benefit determination is incorrect.

In your December 31, 2003 response, you maintain that you had enough hours under the terms of the Plan to be entitled to a benefit. You stated that you did not receive any bonuses, commissions, overtime pay or other non-pension earnings, except the \$1.00 per hour additional pay for working on Sunday, and asked that we provide you information/documentation on how Grand Union determined your hours worked. You later faxed some more of your Grand Union pay stubs.

#### Discussion

According to the records PBGC obtained from Grand Union, you were hired by the Company on July 19, 1993 when you were age 33, and you were employed on a part-time basis until the Plan terminated on January 1, 2001.

PBGC and the Appeals Board determine benefit entitlement in accordance with the terms of the specific plan, the provisions of the Employee Retirement Income Security Act ("ERISA"), and PBGC regulations and policies. Section 2.2 of the Plan in effect when you were hired in 1993 provides that an employee shall become a participant in the Plan as of the January 1 next following the later of the date on which he becomes age 20 ½ and the date six months following the date as of which he became an Employee for purposes of the Plan. The Plan defines "Employee" or "Eligible Associate" as person employed at a regular rate of 1,000 hours per year or who accumulates 1,000 or more hours of employment during the first 12 months of employment or any calendar year after the date of his or her first anniversary. "Hour of Service" is each hour which a person is directly or indirectly paid or entitled to payment by the Company for the performance of duties.

In your appeal, you state that you did *not* work at least 1,000 hours in 1993 and 1994 and, therefore, you do not dispute that you are not entitled to pension credit for these two years. However, you disagree with Grand Union's records, and thus PBGC's findings, for the years 1995 - 2000.

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Your Vesting Service: Please note that under the terms of the Plan and ERISA provisions, a participant receives a full year of vesting service (used to determine benefit entitlement) for each calendar year during which he or she had at least 1,000 hours of service; no credit is given for fewer than 1,000 hours. According to the files, Grand Union reported that you worked less than 1,000 hours during each year of your employment with the Company. (We note that PBGC previously provided you with your hours and earnings obtained from Grand Union for these years, which you cite in your appeal; therefore, they are not repeated here.) However, after reviewing the provisions of the Plan and the pay stubs and W-2's you submitted, the Appeals Board concluded that you had at least 1,000 hours of service in each of the calendar years 1995 - 2000. Thus, you met the Plan's 5-year vesting requirement.

Your Credited Service: The Plan provides for the following credited service (which is used to determine benefit amounts) :

| <u>Hours of Service</u> | <u>Credited Service</u> |
|-------------------------|-------------------------|
| Less than 1,000         | 0                       |
| 1,000 - 1,499           | ½ year                  |
| 1,500 or more           | full year               |

Under the terms of the Plan, you became a Plan participant on January 1, 1996; however, you began accruing credited service on January 1, 1995 (the first calendar year you worked 1,000 hours). You did not earn a full year of credited service in any year because, consistent with your appeal, the Board found that you did not have at least 1,500 hours of service during the year. Since the Board determined that you did work at least 1,000 hours each year 1995 - 2000, you earned 3 years of credited service (½ year each year 1995 - 2000).

Decision

The Appeals Board changed PBGC's September 3, 2003 determination by finding that you earned 3 years of credited service under the Plan and that you are fully vested in your accrued benefit. We will forward a copy of this letter to PBGC's Insurance Operations Department, who will send you a new determination, with a new 45-day right of appeal. Meanwhile, if you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Sherline M. Brickus  
Member, Appeals Board