



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

April 17, 2009



Re: Appeal , Case No. 195884; Republic Technologies International
USS/KOBE Steel Company Union Eligible Pension Plan (the "RTI Plan")

Dear Mr. :

This Appeals Board decision responds to your appeal regarding PBGC's June 4, 2008 revised determination of your PBGC benefit from the RTI Plan. For the reasons we state below, we found that your appeal does not provide a basis for changing PBGC's determination. Therefore, we are denying your appeal.

PBGC's Benefit Determination

On March 6, 2008, PBGC sent a benefit determination letter and Benefit Statement to you, stating that you are entitled to a PBGC benefit of \$1,425.71 per month.¹ On June 4, 2008, PBGC sent a revised benefit determination letter and Benefit Statement to you, stating that you are entitled to a PBGC benefit of \$1,452.71 per month in the form of a Straight Life Annuity ("SLA") with a surviving spouse benefit. The June 4, 2008 letter also stated that, as of August 2008, you were overpaid \$40,921.20 for benefits you received between July 2002 and September 2004 and that PBGC will reduce your monthly benefit by 10% (\$145.27) until the overpayment is repaid.

Your Appeal

On June 11, 2008, you filed an appeal of your benefit determination, objecting to the reduction of your monthly pension and to PBGC recovering the overpayment by reducing your future benefits. You object to PBGC ending your Early Retirement Buyout ("ERB") supplemental payment of \$700.00 per month as of June 14, 2002. You assert that the supplement should not end until you begin receiving 80% of your social security benefit. You also state that PBGC should recover \$23,290.20 of the overpayment from the Carnegie Pension Fund, based upon US Steel's obligation to pay a portion of your benefits.

¹ The March 6, 2008 benefit letter states your benefit is \$1,425.71 per month. The Benefit Statement Worksheet shows a PBGC benefit of \$1,452.71. The correct benefit is \$1,452.71.

Discussion

Background

PBGC is the United States government agency that insures pensions in accordance with Title IV of the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA"), 29 United States Code ("U.S.C.") 1302-1461. If a plan sponsor is unable to support its defined benefit pension plan, PBGC becomes the trustee of the plan and pays guaranteed pension benefits according to the provisions of the plan, subject to legal limits set by Congress under ERISA.

The RTI Plan terminated on June 14, 2002 without sufficient assets to provide all benefits under the Plan. PBGC became trustee of the RTI Plan on September 30, 2003. When PBGC becomes trustee of a terminated plan, PBGC collects participant information and copies of the plan's governing documents from the plan's former administrator and audits that data. PBGC necessarily relies on the data it receives from a former plan administrator unless (1) PBGC's audit of that data shows that it is wrong; or (2) a participant supplies PBGC with documents showing that the data is wrong.

Your RTI Plan Regular Pension and Supplemental Pension Benefits

The data PBGC received from Republic Technologies International ("RTI") shows your retirement date as June , 2000, and your regular pension start date as October 31, 2000, consistent with RTI Plan terms providing a special payment for the three full calendar months immediately following your retirement.² When you retired, you had 34.25 years of service, which includes service with both US Steel and RTI.

The former RTI Plan Administrator calculated your regular pension benefit, pursuant to RTI Plan Section 3.3, as \$1,452.71 per month. The \$1,452.71 RTI regular pension benefit is calculated as a SLA and is equal to the Snapshot Rate x Years of Service minus the USS Offset. This \$1,452.71 is unreduced for your age at retirement. PBGC agrees with the \$1,452.71 Normal Retirement Benefit, calculated by the former RTI Plan Administrator.

In addition to your regular pension benefit of \$1,452.71 per month, RTI offered certain employees an option to participate in the Early Retirement Buyout program.³ The ERB offered participants a choice between (1) a \$15,000 lump-sum payment upon retirement, or (2) if the participant was less than 61 years of age, a \$700 monthly supplement payable until the participant became eligible for a Public Pension, as defined in the RTI Plan. As a 30-year retiree and ERB participant, you were eligible for, and received, the \$700 ERB supplemental benefit pursuant to RTI Plan Section 3.18(a)(2). If the RTI Plan had not terminated, this \$700

² The RTI Plan document that applies to your benefits is the "Pension Agreement Effective August 13, 1999 between Republic Technologies International, LLC Lorain Facility and United Steelworkers of America." An excerpt of all the Plan terms discussed in this decision letter is at Enclosure 1. RTI Plan Section 3.2 discusses the special payment and pension start date.

³ RTI Plan Section 3.18.

supplemental payment would have ended when you became eligible for 80% of your Social Security Pension.

Additional Payments by RTI

PBGC records show that when you retired, you were eligible for a benefit of \$862.60 per month under a US Steel-sponsored pension plan ("USS Plan") in addition to your benefits under the RTI Plan. Beginning in January 2000, RTI paid you your USS Plan benefit of \$862.60 per month in addition to your benefits under the RTI Plan. As will be explained more fully below, RTI's payment of your USS Plan benefit is not one of the benefits provided by the RTI Plan.⁴

Your PBGC Benefit

On June 4, 2008, PBGC notified you that your PBGC benefit is \$1,452.71 per month. In the following sections titled "*Your USS Plan Benefit is an Offset Under the RTI Plan,*" and "*Your PBGC Benefit is Limited by the Accrued at Normal Limit*" we will explain why your PBGC benefit is \$1,452.71.

Your USS Plan Benefit is an Offset Under the RTI Plan

The first issue is whether your RTI Plan benefit should be offset by the amount of your USS Plan benefit, which is payable by the Carnegie Pension Fund.⁵ You were a participant in both the RTI Plan and the USS Plan. You are entitled to a separate benefit under each plan. The benefits you are entitled to receive from PBGC are limited to those defined in the RTI Plan, subject to limitations under ERISA and PBGC regulations.

The RTI Plan provides that your regular pension, as calculated under section 3.3 of the Plan, "shall be reduced by any benefits payable under the USS Plan as described in Section 6."⁶ The RTI Plan at section 6(b) provides that the benefits payable by the USS Plan, as described in Section 6 of the RTI Plan, "shall be deducted from the payment made pursuant to this Agreement."

The RTI Plan also provides that ERB retirees who are not eligible for an immediate, unreduced benefit from the USS Plan will receive, from the RTI Plan, their unreduced USS Plan benefit until the retiree becomes eligible for an unreduced USS Plan benefit or elects to start the USS Plan benefit, if earlier.⁷ Under the RTI Plan, however, if a retiree is eligible for benefits under another plan, the RTI Plan will offset the amount that is payable under the other plan.⁸

⁴ The RTI Plan uses the term "USS Plan" to refer to the US Steel sponsored Plan. RTI Plan section 1.1(n) defines "USS Plan" as "the Pension Agreement effective January 31, 1987 between USS Division of USX Corporation and the USWA, or any predecessor agreement thereto."

⁵ We note that when PBGC stopped paying your USS Plan benefits in 2004, the Carnegie Pension Fund resumed paying the USS Plan benefit.

⁶ RTI Plan Section 3.3(4).

⁷ RTI Plan Section 3.18(c).

⁸ RTI Plan Sections 3.3, 3.9 and 6.

When you retired from RTI as a 30-year retiree, you were eligible for an immediate, unreduced benefit from the USS Plan. Therefore, although RTI paid you your USS Plan benefit, payment of your USS Plan benefit was not an RTI Plan benefit.⁹ Under the terms of the RTI Plan, your USS Plan benefit must be an offset from your RTI Plan benefit. As PBGC pays your benefit according to the terms of the RTI Plan, your PBGC benefit does not include payment of your USS Plan benefit.

PBGC Payment Limitations

Because of legal limits under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay. 29 U.S.C. § 1322; 29 Code of Federal Regulations ("C.F.R.") § 4022.3. One of these legal limits, the Accrued at Normal Retirement Age (often referred to as the "Accrued at Normal") limit has an impact on your benefit.

Your PBGC Benefit is Limited by the Accrued at Normal Limit

The next issue is whether your PBGC benefit should be limited by the Accrued at Normal limit, and if so, how that affects your monthly benefit. Under the Accrued at Normal limit, PBGC cannot guarantee any portion of your pre-age 63 supplement unless the supplemental portion, when added to your regular monthly benefit, is less than or equal to the benefit you would otherwise receive under the plan at normal retirement (age 65) in the form of a Straight Life Annuity.¹⁰

As a 30-year retiree, you were eligible to receive your normal retirement benefit, unreduced for age, from both the RTI Plan and the USS Plan immediately upon your retirement. Your regular monthly benefits before age 63 (\$1,452.71 + \$862.60), equals the amount you are entitled to receive at your normal retirement age in the form of an SLA. Your temporary ERB supplement, combined with your regular benefit, thus exceeds the amount you would receive as a SLA at your normal retirement age. Accordingly, PBGC cannot guarantee any portion of your \$700.00 supplement, because the supplement exceeds your Accrued at Normal limit.

In your appeal, you referred to a discussion of the supplemental benefits on page 33 of a publication provided by PBGC officials at a Participant Meeting. A copy of the slides on pages 31 through 34 of that handout is at Enclosure 2. As shown by Slides 67 and 68 on page 34, when the regular plan benefit until age 63 is equal to the plan benefit after age 63 and the benefit is paid as an SLA, the PBGC benefit does not include any of the temporary supplement. A further discussion of the slides is attached to this letter as Appendix A.

⁹ It is our understanding that RTI paid the USS Plan benefit pursuant to a restructuring agreement between RTI and US Steel.

¹⁰ C.F.R. § 4022.21(a)(1).

ERISA Section 4044 permits PBGC to pay benefits to participants greater than their guaranteed benefit, if there are sufficient plan assets available. Unfortunately, RTI plan assets were insufficient to pay any portion of your \$700.00 monthly supplement.

You Received a PBGC Overpayment

When PBGC becomes trustee of a terminated plan, PBGC pays benefits on an estimated basis to minimize financial hardship for retirees while PBGC begins its audit of the plan. In some cases, such as yours, PBGC must reduce the estimated benefits based on PBGC's guarantee limits or other factors.

When the RTI Plan terminated, you continued to receive monthly payments of \$3,015.31, the same amount you were receiving before the RTI Plan terminated. The \$3,015.31 included your PBGC guaranteed benefit of \$1,452.71; your \$700.00 temporary supplement and your \$862.60 USS Plan benefit. As discussed above, your correct PBGC benefit, however, is \$1,452.71.

From July 2002 through September 2004, a period of 27 months, you were overpaid \$1,562.60 per month, for a total overpayment of \$42,190.20. Beginning October 1, 2004, PBGC underpaid you by \$27.00 per month. As of August 1, 2008, PBGC reduced your overpayment balance from \$42,190.20 to \$40,921.20 because of the underpayments.¹¹

*PBGC is Required to Recoup Overpayments
From the Participant who Received the Overpayment*

PBGC's regulations require PBGC to recover overpayments by recouping a small percentage of a retiree's benefits in those cases where the retiree is entitled to receive future benefits from PBGC.¹² You are entitled to receive future benefits from PBGC. PBGC must, therefore, recover your overpayment through a small percentage reduction of your future monthly payments. As PBGC's letter of March 6, 2008 stated, PBGC will recover the overpayment balance by making a deduction of \$145.27 per month from your benefit, until the overpayment is repaid.

In your appeal, you state that PBGC should require Carnegie to repay the USS Plan portion of your overpayment. Although Carnegie may have an obligation to pay your USS Plan benefit, Carnegie's obligation to do so does not relieve you of your obligation to repay amounts you were not entitled to receive from PBGC.¹³

While we are sympathetic to your situation, PBGC and the Appeals Board must follow the terms of the governing plan document, the law, and applicable regulations and policies.

¹¹ Your overpayment continues to decrease by \$27.00 per month while your appeal is pending.

¹² 29 Code of Federal Regulations § 4022.81.

¹³ Counsel for the United Steelworkers Union informed the manager of the PBGC Appeals Division that the Union is seeking to obtain Carnegie Pension Fund payments for USS Plan benefits that RTI/USS Plan participants were entitled to receive from Carnegie.

Recoupment Terms

To minimize hardship to participants in your situation, PBGC policy provides the following recoupment terms.

- (1) PBGC is not demanding immediate repayment.
- (2) PBGC is recouping only by reducing future benefit payments to you.
- (3) PBGC generally limits its reductions for recoupment to 10% of the monthly benefit.
- (4) PBGC is not charging interest on your overpayment balances.
- (5) PBGC will not seek repayment of any remaining overpayment balance from your estate should you die before the overpayment is repaid.

Decision

Applying the law, PBGC's rules and the RTI Plan provisions to the facts in your case, we have determined that your PBGC benefit is \$1,452.71 and your overpayment is \$40,921.20, as of August 1, 2008. Therefore, we are denying your appeal. This decision is PBGC's final action regarding your appeal. You may, if you wish, seek review of this decision in an appropriate federal district court.

If you have other questions 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 RTI Plan (Case 19588400).

Sincerely,



Virginia Robinson
Appeals Board Member

Appendix A: Discussion of Slides Used at Participant Meeting (1 page)

2 Enclosures:

1. Excerpt RTI Plan Agreement effective August 13, 1999 (13 pages)
2. Copy of 8 slides used by PBGC officials (4 pages)