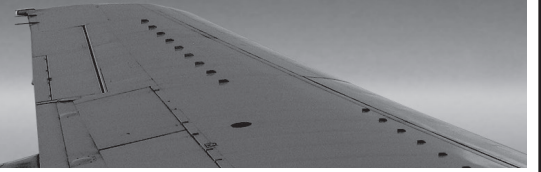


ABAP

Caring for BA pensionable people today and tomorrow



President: George Bell

www.abaponline.org

Chairman: Captain Mike Post

ASSOCIATION OF BRITISH AIRWAYS PENSIONERS

c/o BALPA House, 5 Heathrow Boulevard, 278 Bath Road, West Drayton, UB7 0DQ

Newsbrief No. 106

May 2017

Judge Rules in Favour of APS Trustees' Decision to Pay Discretionary Increases

ABAP is pleased to report that on 19 May 2017 Mr Justice Morgan handed down his judgment on the case that BA had brought against the APS Trustees on 6 December 2013 in an attempt to stop them paying a 0.2% discretionary increase in 2013. The Judge ruled that the Trustees' decision to pay the discretionary increase was legal.

The full judgment may be found in the News section of the APS Section of the My BA Pension website. Here is the Judge's Summary:

- (1) the amendment to rule 15 did not infringe proviso (i) to clause 18; the amended rule 15 is itself subject to proviso (i) to clause 18; the scope of the power under the amended rule 15 is restricted so that the trustees may not make benevolent or compassionate payments and may not make payments which are not for the purposes of the scheme;
- (2) the amendment to rule 15 was not beyond the scope of the power to amend conferred by clause 18;
- (3) the amendment to rule 15 was not an abuse of the power to amend conferred by clause 18;
- (4) the trustees (including the MNTs) actively and genuinely engaged with the decision-making process which led to the decision to amend rule 15;
- (5) the amendment made to rule 15 was valid and effective;
- (6) the decision on 26 June 2013 to award a discretionary increase of 0.2% was not an effective exercise of the power conferred by the amended rule 15 because the trustees did not determine any effective date for the increase;
- (7) the decision of 19 November 2013 to award a discretionary increase of 0.2% with effect from 1 December 2013 did not involve the making of a benevolent or compassionate payment;
- (8) the decision of 19 November 2013 did not change the purposes of the scheme; the purposes of the scheme included the delivery of the benefits defined from time to time by the scheme; the trustees had the unilateral power under clause 18 and the amended rule 15 to define the benefits of the scheme;
- (9) the decision of 19 November 2013 was not beyond the scope of the power conferred by the amended rule 15;

- (10) the decision of 19 November 2013 was not an abuse of the power conferred by the amended rule 15;
- (11) in relation to the decision of 19 November 2013, the trustees (including the MNTs) actively and genuinely engaged with the process of deciding on whether to award a discretionary increase;
- (12) in relation to the decision of 19 November 2013, the trustees had regard to all relevant considerations and to no irrelevant considerations;
- (13) the decision of 19 November 2013 was a valid and effective decision to award a discretionary increase of 0.2% with effect from 1 December 2013.

The Judge completely exonerated the Trustees of any wrong doing and was also careful to praise Michael Pardoe, the Scheme Actuary. The Judge wrote: “Another matter which lengthened the trial was the attack made by BA on Mr Pardoe. It was suggested that he had behaved inappropriately in a number of respects. BA wished to, and as the result of an interlocutory ruling in this case was permitted to, call expert evidence to assist it to try to advance those suggestions. In closing submissions, very little if anything remained of those suggestions. In view of the suggestions which were made, I wish to record my assessment of Mr Pardoe which I was able to form having heard him cross-examined for four days. I found Mr Pardoe to be an actuary of outstanding ability who behaved entirely appropriately at every stage during a long and difficult process of deliberation by the trustees in this case.”

What does this mean, and what happens next?

However, there was another High Court hearing on Thursday, 25 May to consider the “consequential matters”. At this hearing, which was attended by four of the six Member-elected, but none of the BA-appointed, Trustee Directors (as we must now call them), BA’s QC announced that it was BA’s intention to appeal on the grounds that the 0.2% discretionary increase payment was “benevolent” and contrary to the purposes of the Scheme. It is a matter of fact that BA has replaced all the Trustees (now called Trustee Directors) who had the temerity to approve the 2013 Discretionary Increase payment.

The Judge allowed the appeal because, if he had not done so, this would have delayed the final conclusion even more than the 18 months or so that it will now take. Had the Judge refused leave to appeal, because BA’s argument was not entirely frivolous - technically, “there was a real prospect of success”, BA would have used its right to go straight to the Court of Appeal, a process which would have prolonged the litigation even more.

At the 25 May hearing BA was also granted an injunction to block trustees from paying the 0.2% increase until the appeal has been heard. This is not as perverse as it first seems because, if BA loses the appeal, BA will be required to pay damages to individual members of the 0.2% increase plus 2% interest above the base rate.

The Trustee’s QC had pointed out that between the start and the end of the litigation approximately 6,100 APS pensioners will have died and would not have received the money to which they were entitled.

Pensioners are urged not to be too disappointed with the current state of play. Owing to the effect of compounding, it is the final result that matters. The longer that pensioners do not receive the RPI increases they were promised, the more severe the effect on their financial circumstances in extreme old age. It is odd that BA appears to prefer to give money to lawyers rather than to honour the pension promises it made in 1984.

The ABAP Committee