

Ombudsman's Determination

Applicant	Mr Y
Scheme	New Airways Pension Scheme (the Scheme)
Respondent	British Airways Avionic Engineering Ltd (BA)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by BA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y's complaint concerns the reduction in his pensionable salary. He believes the reduction was done arbitrarily by BA, and is contrary to previous agreements.

Background information, including submissions from the parties

4. Mr Y was employed by BA as a Cell Coordinator. In 2002, following a restructure by BA, Mr Y transferred from the role of Cell Co-ordinator to the role of Senior Technician. The Senior Technician's salary was lower than the Cell Co-ordinator's, at the time.
5. The terms and conditions of the transfer were detailed in a letter that was sent to Mr Y in 2002 (**the 2002 Agreement**). The 2002 Agreement contained details of the protection of Mr Y's salary.
6. Sections two and three of the 2002 Agreement stated:

"Your current pay and conditions will remain the same for the financial years, April 2002/March 2003 and also April 2003/ to March 2004.

From April 2004 any settlements up to and including RPI, agreed on behalf of the collective bargaining group will be applied up to you. For any agreements reached over and above RPI, the RPI element only will be applied to your salary."
7. Section four of the 2002 Agreement stated that:

“This arrangement will continue until the Senior Technician salary reaches yours, or you are promoted to a role within [BA] attracting a higher salary than you are currently on, whichever is sooner.”

8. Section seven of the 2002 Agreement stated:

“Once the pay for the two roles merge under the arrangements explained in paragraphs 2-4 above, normal collective bargaining arrangements will apply.”

9. Section nine of the 2002 Agreement also recognised that at retirement, Mr Y’s accrued benefit would be the same as that of a Senior Technician’s, although he had paid higher pension contributions. Therefore, he was refunded a one-off lump sum of £400 for the extra contributions he had paid into the Scheme.
10. In 2004, BA’s Collective Bargaining Group agreed to a three-year deal from April 2004 to March 2007 (**the 2004 Agreement**), regarding separate increases to pensionable and non-pensionable salaries. (Details of the percentage increases applied to pensionable and non-pensionable salaries as agreed in the 2004 Agreement, are in the Appendix).
11. The Agreement also said:
- “Those currently red ringed will get £1000 as a one-off lump sum equally split over three years.”
12. Those red ringed included Mr Y and his four colleagues, Mr G, Mr N, Mr S and Mr N.
13. On 15 November 2016, BA sent Mr Y a letter regarding the 2002 Agreement. It explained that the pay agreement for 2016/17 had resulted in an increase in the Senior Technician’s salary. Therefore, as the Senior Technician’s salary had become higher than the Cell Co-ordinator’s salary (**the protected salary**), the 2002 Agreement had expired. The letter also informed Mr Y that he “will receive the salary attached to the [Senior Technician] with effect from 1st April 2016.”
14. Mr Y’s pensionable salary was reduced from November 2016, as the pensionable salary of a Senior Technician was less than the pensionable salary of a Cell Co-ordinator.
15. Unhappy with the reduction of his pensionable salary, in March 2017, Mr Y along with four of his colleagues, raised a collective grievance with BA through BA’s grievance procedure.
16. On 21 April 2017, BA responded to Mr Y and his colleagues under stage two of BA’s grievance procedure. It did not uphold their complaints. BA explained that “the variation of pensionable pay was considered and included in [the 2002 Agreement] and recompense for the variation was made and accepted.”

17. Dissatisfied with the response they received from BA, Mr Y and his colleagues referred their complaints to this Office. As well as providing a background to why they have raised a complaint, Mr Y and his colleagues made the following points:

- The 2002 Agreement was made on the basis that pensionable salary and actual salary were, at the time, the same thing. The compensation was not for future loss. It was because they had made greater pension contributions than a Senior Technician, but would have ultimately received the same pension at retirement.
- The 2002 Agreement was that the two salaries would merge at some point, not that at some point in the future, the figures would need to be adjusted as they were in November 2016. The 2016 decision ignores the fundamental differences between the two concepts of pensionable and actual salary.
- The 2002 Agreement is the only agreement that determines the protection arrangements for the Cell Co-ordinators. It does not specify what happens if pensionable pay and the actual pay become separate amounts. It does not give agreement for an arbitrary alignment of these two amounts as there was no provision in the 2002 Agreement for pensionable pay and actual pay being different amounts.
- The de-alignment of these different amounts did not happen by accident, it happened because of a specific agreement such as the 2004 and subsequent agreements. Therefore, the only reasonable way to realign the amounts would again be through a specific agreement, but this did not happen.
- The 2004 Agreement meant that pensionable salary would be capped at the rate of RPI. Therefore, the pensionable salaries of the Cell Co-ordinators and Senior Technicians would always be different, though over time if there were above inflation pay rises, the actual salary would become the same.
- The 2004 Agreement meant that pensionable salary and actual salary would become different concepts. Significantly, it meant that while the former Cell Co-ordinator's actual salaries would at some point merge with the Senior Technician's, their pensionable salaries would never merge. It would continue to maintain the same differential in percentage terms.
- In 2016, an arbitrary decision was made to reduce their pensionable salary to the level of the Senior Technician's. There was no consultation on this decision, and there was no proviso in the 2002 Agreement or any other agreement, for this to be done.
- Prior to this, all changes relevant to this matter occurred because of agreements. They do not believe that BA had the right to make such a significant decision unilaterally.

- The reduction of pensionable salary will result in a pension loss of approximately £250 per annum, for the rest of their lives.
 - Colleagues in the same position as them who retired before November 2016, have received a pension at a higher rate, and will continue to do so, which adds to the unfairness.
 - They had no consultation about the change, and no formal notification of the change. They only became aware of it by looking at their payslips.
18. In response to the complaints, BA provided copies of correspondence between the complainants and BA. It also included copies of the 2002 and 2004 Agreements, and made the following points:
- In November 2016, in line with sections four and seven of the 2002 Agreement, the Senior Technician's salary reached and exceeded that of the Cell Co-ordinator's salary. Therefore, Mr Y and his four colleagues transitioned on to the terms and conditions of a Senior Technician in 2016.
 - A letter was sent to each individual detailing that the Senior Technician's salary had reached the current protected salary they were receiving, and that the 2002 Agreement had now expired. The letter did not detail the change in pensionable pay as this was detailed in the 2002 Agreement.
 - There has always been a difference in pensionable salary, and actual salary for every grade of employee at BA. These could differ from member to member, depending on the personal choices they made within the Scheme.
 - When joining the company, new employees are provided with communications to explain how each pension scheme works, and how pensionable salary differs to their basic salary. The communications also explained their choices regarding contributions.
 - The Senior Technician's pensionable salary that Mr Y and his colleagues transferred to, in November 2016, was lower than their current pensionable salary. Therefore, their pensionable salary was reduced.
 - Mr Y and his colleagues were compensated twice for this. First by virtue of section nine of the 2002 Agreement and secondly, by the payment of £1,000 in the 2004 Agreement for those 'red ringed.'
 - Section nine of the 2002 Agreement informed Mr Y that at retirement, his accrued benefits would be the same as a Senior Technician's. Section eight of the 2002 Agreement also informed Mr Y and his colleagues that if they retired before the end of the agreement, they would receive a higher pension than someone who retired after the end of the agreement.

Adjudicator's Opinion

19. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by BA. The Adjudicator's conclusions are summarised briefly below:-

- The 2004 Agreement did not guarantee Mr Y that his pensionable salary would continue to be different to that of a Senior Technician's pensionable salary, after the two salaries merged.
- The Adjudicator noted that Mr Y said that he was not notified of the reduction prior to it being implemented in November 2016. However, the 2002 Agreement informed Mr Y that once the Senior Technician's salary merged with his 'protected salary', normal collective bargaining arrangements would apply.
- Mr Y accepts that the 2002 Agreement did not distinguish between pensionable and non-pensionable salary. Therefore, in the Adjudicator's opinion, BA had made Mr Y aware of the possibility of the reduction since 2002. The Adjudicator did not consider that the 2004 Agreement which was only in place for three years, superseded the terms of the 2002 Agreement.
- Additionally, the information received from BA showed that pensionable pay and actual pay were never the same. Therefore, it was the Adjudicator's view that BA did not make the decision unilaterally, to change how pensionable salary was calculated in November 2016.
- The Adjudicator understood Mr Y's disappointment that his colleagues who retired prior to November 2016, may be in receipt of a higher pension than he will receive at retirement. However, in the Adjudicator's opinion, there was no maladministration by BA when it reduced Mr Y's pensionable salary in November 2016. This was because the 2002 agreement was applicable to individuals, who retired prior to the two salaries merging. The 2002 Agreement no longer applied to individuals who retired after the salaries had merged.
- The Adjudicator appreciated Mr Y was unhappy that his pensionable salary was reduced in November 2016. However, because of the above, the Adjudicator did not believe that I would uphold Mr Y's complaint. Therefore, it was her view that, this complaint should not be upheld.

20. Mr Y did not accept the Adjudicator's Opinion and in response, made the following comments.

- He feels that BA has failed to properly justify why the pensionable salary was arbitrarily changed in a manner which was completely different to how it had been changed for the previous 12 years. He does not believe the arguments he has raised to date, have been properly addressed by BA.

- The 2002 Agreement offered compensation for greater contributions prior to 2002, but not for future contributions. The result of this “arbitrary change” is that colleagues on the protection who left prior to the 2016 pay rise, would have had a greater pensionable salary compared to someone who left after 2016, even if they had contributed less.

21. The complaint was passed to me to consider. I agree with the Adjudicator’s Opinion, and will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman’s decision

22. Mr Y’s complaint concerns the reduction in his pensionable salary. He believes the reduction was done arbitrarily by BA, and is contrary to previous agreements.
23. Mr role as the Ombudsman is to review the evidence and determine if there has been any mistake of law or maladministration by the Respondent to the complaint. I am not able to amend the terms of either the 2002 or the 2004 agreements. I can only look at whether BA implemented them properly. I do not find that there was any mistake of law or maladministration by BA when it reduced Mr Y’s pensionable pay in November 2016. It is my view that the 2002 Agreement, which was not superseded by any subsequent agreements, clearly informed Mr Y what would happen once the two salaries merged.
24. I do not find that BA did anything in contravention of the 2002 Agreement. The 2002 Agreement, guaranteed pay and conditions for two years up until 2004. Thereafter Mr Y would receive any collectively negotiated pay increases up to RPI but if increases above RPI were agreed for the rest of the workforce he would not receive them. In 2004, the collective bargaining agreement put in place one level of increase for pensionable pay and an additional element of increase for non-pensionable pay. The latter was above RPI.
25. For employees who could take advantage of increases above RPI, this caused the gap between actual and pensionable pay to widen over the period up to 2016. The consequence was that by the time the Senior Technician’s actual salary reached and exceeded that of the Cell Co-ordinator’s actual salary, the pensionable pay rate attaching to the Senior Technician role was still lower than that attaching to the Cell Co-ordinator’s role. Once the actual pay of the two roles had become equivalent, the 2002 Agreement ceased to cause Mr Y to be treated differently to other Senior Technicians and he moved onto the pay and conditions of the role in which he had been working since 2002. That included its lower pensionable pay.
26. Mr Y asserts that the compensation he received with the 2002 Agreement was for past, and not future loss.
27. I cannot see anything on the face of the 2002 Agreement that states that the compensation is for past not future loss. Even if Mr Y is correct about that, I cannot amend the terms of the Agreement which was in fact struck to create a right to

PO-18020

compensation for future loss. I can only decide whether BA implemented it correctly. I find that they did.

28. To conclude, I understand Mr Y's disappointment that his pensionable salary has been reduced. However, I do not find there was any mistake of law or maladministration by BA.

29. Therefore, I do not uphold Mr Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 December 2018

APPENDIX

Extracts from the 2002 Agreement

This amended proposal is in response to a request for further clarity over the terms of the offer agreed for all those in the current Cell Co-ordinator position.

Provided that this letter is signed and returned by the date below, the following terms will be applied to your transfer from the role of Cell Co-ordinator to that of Senior Technician.

1. You will take up the position of Senior Technician from 1st June 2002 in your current workshop.
2. Your current pay and conditions will remain the same for the financial years, April 2002/March 2003 and also April 2003/ 10 March 2004.
3. From April 2004 any settlements up to and including RPI, agreed on behalf of the collective bargaining group will be applied to you. For any agreements reached over and above RPI, the RPI element only will be applied to your salary.
4. This arrangement will continue until the Senior Technician salary reaches yours, or you are promoted to a role within BAAE attracting a higher salary than you are currently on, whichever is sooner.
5. Whilst it is not the intention to make further structural changes within Operations in the foreseeable future, should you be asked to move to another role within the Company paying less than your current salary, the pay protection arrangements described in paragraph 3 will continue.
6. The arrangement in paragraph 5 is valid provided the reason for any such downward move is not as a result of the implementation of the Company Performance Management process, attributable to your own failure to meet the requirements of the job; **OR**, a specific application on your part for a job of a lower grade.
7. Once the pay for the two roles merge under the arrangements explained in paragraphs 2-4 above, normal collective bargaining arrangements will apply.
8. Whilst we recognise that you have paid higher pension contributions during the time you have held this post, you will also be eligible for the benefits of this due to higher death in service benefits or higher accrued pension benefits should you choose to leave.
9. However, we realise that at retirement, your accrued benefits will be the same as a Senior technician who has not paid extra contributions. In consideration of this we will pay a one off lump sum of £400.
10. This will be paid in two parts. £100 payable on transfer to the new job title and £300 payable in June 2004.

11. If you were to leave within 6 months of the first payment, this will be claimed back in your final salary. If you leave after 6 months but before June 2004, no payment would be due, as no actual loss will have been incurred. Should you leave during the 6 months following the final payment we will reclaim the amount paid on a pro rata basis.

Extracts from the 2004 Agreement

BAAE Collective Bargaining Group

Ballot Result

A three year deal from April 2004 to March 2007 with payments of:

Year 1 - 2.5% pensionable + 1.5% non pensionable on basic

Year 2 – RPI pensionable (Best of Dec, Jan, Feb) + 1.5% non pensionable on basic

Year 3 – RPI pensionable (Best of Dec, Jan, Feb) + 1.5% non pensionable on basic

Based on agreement to:

- Follow the delegated task process for Non Authorised Technicians.
(See guidelines issued by Quality below)

“An 'Appropriately Authorized Technician' (T2) has the authority to make a task 'Non Delegated' where they deem it necessary to oversee the task.

'The following are the restrictions on delegation of tasks.

An 'Appropriately Approved Technician' (T1) must not complete and or sign the release to service certificate (JAA/EASA Form One).

For restrictions on welding refer to WI - 3.11.1

For restrictions on NDT refer to WI - QU 3.11.2

For restrictions on PCB repair refer to WI - OP 3.8.5

Except for the above it will be assumed that all tasks can be delegated.”

The following has also been agreed:

PO-18020

- BAAE gives the assurance that the current Senior Technician headcount will be maintained and that the Senior Technician role will be secure.
- Those currently red ringed will get £1000 as a one off lump sum equally split over three years
- 2 days every 5 years for Associates moving house
- 1 week paid leave for TA or Reservists when attending official training
- In accordance with the current shift working agreement, shift pay will be increased by the total % rise in basic pay each year of this agreement.