IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

JOHN J. DENNISON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

MONY LIFE RETIREMENT INCOME SECURITY PLAN FOR EMPLOYEES, MONY LIFE INSURANCE COMPANY and the ADMINISTRATOR of the plan,

Defendants.

OPINION and ORDER

10-cv-338-bbc

- -

In this class action brought under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, plaintiff John Dennison contends that defendants MONY Life Retirement Income Security Plan for Employees, MONY Life Insurance Company and the administrator of the plan violated ERISA by retroactively modifying the discount rate used to calculate lump sum payouts of plaintiff's and class members' lifetime annuity benefits, thereby reducing their benefits under the plan. (I dismissed plaintiff's claim against the Excess Benefit Plan for MONY Employees in an opinion and order dated December 17, 2010.) Plaintiff is proceeding as representative of the following class:

> Employees who received a lump-sum distribution under the MONY Life Retirement Income Security Plan after June 23, 2004, but whose lump sum payments were not calculated using the discount rate or rates in effect at the time of their termination of employment, as well as all participants who are entitled to receive but have not yet received such lump-sum distributions. The class includes the surviving spouses or beneficiaries of any deceased class members.

Dkt. #97 at 21.

Now before the court are the parties' cross motions for summary judgment. Defendants contend that the administrator's calculation of plaintiff's lump sum distributions under the plan using an amended discount rate was correct and reasonable under the plan language, while plaintiff contends that the plan required the administrator to calculate lump sum benefits using the rate in existence when plaintiff and class members terminated their employment.

Also before the court is plaintiff's motion to file a reply to defendants' response to plaintiff's proposed findings of fact, dkt. #123, and defendants' motion to strike the reply. Dkt. #124. I will grant plaintiff's motion and deny defendants' motion. Plaintiff's reply simply highlights particular language in the benefits appeals committee's decision, a decision that is already in the record. Further, this evidence has no affect on the outcome of my decision.

After considering the parties' arguments and the Plan language, I conclude that the plan administrator's and benefits appeals committee's interpretation of the Plan and their calculation of plaintiff's lump sum benefit were not arbitrary and capricious. Under the administrator's and committee's reasonable interpretation of the Plan, the administrator was permitted to apply a discount rate that was higher than the rate in place when plaintiff terminated his employment. Therefore, I am granting defendants' motion for summary judgment and denying plaintiff's motion.

UNDISPUTED FACTS

A. <u>The Parties</u>

Plaintiff John Dennison was an employee of defendant MONY Life Insurance Company until August 5, 1996. At the time his employment with MONY terminated, he was a participant in two employee retirement plans sponsored by MONY: (1) the MONY Life Retirement Income Security Plan for Employees, which I will refer to as the Plan; and (2) the Excess Benefit Plan for MONY Employees, an unfunded defined benefit plan for highly compensated MONY employees. When plaintiff reached age 55 in 2009, he became entitled to distribution of his benefits from those plans. Rather than receive his benefits in the form of monthly annuity payments, plaintiff invoked his option under each plan to receive his benefit in the form of a single, lump sum payment.

B. MONY Life Retirement Income Security Plan

The Plan is a defined benefit pension plan and trust sponsored and maintained by defendant MONY Life Insurance Co. for its eligible employees. It is administered by an administrative committee appointed by an officer of MONY.

When plaintiff terminated his employment in 1996, the Plan in effect was the Plan effective as of January 1, 1994. 1994 Plan, dkt. #113-8. The current Plan is the January 1, 2008 Plan, as amended. Dkt. #113-10. (In all respects relevant to this case, the 1994 Plan is the same as the one in effect in June 2009, when plaintiff received his lump sum payment, with the exception of the applicable discount rate.)

Under the Plan, the plan administrator is responsible for decisions on claims for benefits. If the administrator denies a claim for benefits, the claimant may appeal to the benefits appeals committee, which is established by delegation of authority from the plan administrator. The Plan states that "the Administrative Committee shall have the full power and authority necessary and appropriate to carry out its responsibilities hereunder, and shall have full discretion in interpreting the Plan and deciding all questions of fact within the scope of its authority." 1994 Plan, § 10.11.

The third paragraph of the Plan's preamble, titled "Purpose," provides that

> The rights of any person who terminated employment or who retired on or before the effective date of a particular amendment, including his or her eligibility for benefits and the time and form in which benefits, if any, will be

> paid, shall be determined solely under the terms of the Plan as in effect on the date of his or her termination of employment or retirement, unless such person is thereafter reemployed and again becomes a Participant or unless otherwise made applicable for former Employees.

Id., Purpose, at 2.

The Plan defines "participant" as "any Eligible Employee who accrues benefits in the Plan in accordance with Section 2." Id. at § 1.56. The Plan defines "eligible Employee" as "all Employees who are expected to complete at least one year of employment in which they work at least 1000 scheduled hours in their first year of Service with the Employer," id. at § 1.30, and "employee" as "any person engaged in rendering personal services under the direction and control of the Employer." Id. at § 1.31.

The Plan also contains a provision regarding plan amendments, stating that defendant MONY "shall have the exclusive right to amend and/or terminate the Plan, at any time by an instrument in writing, effective retroactively or otherwise, provided, however, that no amendment shall . . . (b) reduce the Accrued Benefit of any Participant; or (c) eliminate an optional form of benefit, except as permitted by Code Section 411(d)(6), or other applicable law." Id. at § 13.1.1(b), (c).

The Plan defines "accrued benefit" as "the value of a Participant's Retirement Benefit expressed as a Straight Life Annuity determined according to the terms of the Plan, comprised of the annuitized value of Employer Contribution Account and the Defined

Benefit." Id. at § 1.2. A "straight life annuity" is defined as "an annuity payable for the life of a participant," id. at § 1.70, and a "retirement benefit" is "a benefit payable on the dates, in the forms, and in the amounts specified in Section 9, whichever is applicable." Id. at § 1.64.

Under the Plan, participants are entitled to receive an age-adjusted accrued benefit when they reach age 55, the plan's "early retirement age." Id. at §§ 1.27, 3.4.1, 5.2. A participant's early retirement benefit is paid out as a straight life annuity, payable for the life of the participant, unless the participant elected an optional form of benefit that was the "equivalent actuarial value" of the straight life annuity, defined as "a benefit of equivalent value to another form of benefit." Id. at § 1.36. The Plan offers eight different "optional forms," one of which is "an immediate or deferred lump sum payment." Id. at § 9.2(5). As I noted, the only relevant difference between the plan in effect in 1996 when defendant left MONY and the one in effect when he became eligible for his benefit is the discount rate applicable to present value of lump sum payments. In 1996, the Plan specified that the discount rate would be "the PBGC [Pension Benefit Guaranty Corporation] immediate annuity rate as of 120 days prior to the Benefit Commencement Date." Id. at § 1.36. The Plan combines the interest rate with life expectancy assumptions to convert the stream of future annuity payments into a present value, which is the amount of the lump sum. Id.

In 2001, defendant MONY amended the Plan's definition of "actuarial equivalent" to provide that lump sum distributions would be calculated using the annual rate of interest on 30-year Treasury securities. Dkt. #113-9, 2001 Plan, § 1.3. The amendment was in response to Congress's amendment to the Internal Revenue Code that made the 30-year Treasury rate the maximum permissible rate for calculating the present value of benefits. 26 U.S.C. § 417(e)(3)(A)&(B) (2000).

In 2009, defendant MONY amended the Plan again to incorporate the "segmented rate" from the Pension Protection Act of 2006.

C. Plaintiff's Claim for Benefits

Plaintiff became eligible for distribution under the Plan in 2009, when he reached age 55. By letter dated April 28, 2009, plaintiff (through counsel) requested payment of his retirement benefits in the form of a lump sum payment. Dkt. #113-1. In the letter, he wrote that it appeared from the benefits package he had received that defendants were using the "segment rate" inserted in Code Section 417(e)(3)(C) by the Pension Protection Act of 2006" to calculate the value of his lump sum distribution. Id. Plaintiff requested that the lump sum amount be calculated using the PBGC rate under the 1994 Plan that was in effect at the time of his termination. Id. Plaintiff maintained that the Plan's preamble and its anti-cutback provision "require use of the PBGC Interest Rate, rather than any interest rate included in later [plan] documents for determination of [plaintiff's] lump sum benefits under the [plan.]" Id.

In June 2009, plaintiff received a $325,054.28 check from the Plan administrator, representing the administrator's calculation of plaintiff's accrued benefit under the Plan as a lump sum distribution. The amount was not calculated using the PBGC rate formula from the 1994 Plan. Instead, the administrator utilized a discount rate that was higher than the PBGC rate, which had the effect of reducing plaintiff's lump sum distribution under the Plan.

On June 5, 2009, plaintiff's counsel wrote to the plan administrator, contending that the lump sum amount provided to plaintiff was too low because it was calculated using an interest rate higher than the PBGC rate. Dkt. #113-2. Counsel advised the administrator that plaintiff would deposit the check, while reserving his rights to seek the additional amount to which he claimed entitlement.

On July 16, 2009, the Plan was amended as part of a set of amendments made to conform to certain changes in the law enacted by the Pension Protection Act of 2006. Under that Act, Congress specified a "segment rate," to be set forth by regulation by the Secretary of Treasury, as the maximum permissible rate for calculating the present value of benefits. Pub. L. No. 109-280; 26 U.S.C. § 417(e)(3)(C) (2010). Defendant MONY amended the Plan to provide that "[e]ffective January 1, 2008, the applicable interest rate shall be the interest rate prescribed by the Secretary of Treasury under Code Section

417(e)." Dkt. #113-2. The 2009 amendment was made applicable to the calculation of lump sum benefits "payable to Participants who commence payments after December 31, 1999." Id. at § 1.

On July 22, 2009, Jean Grevelding, the assistant vice president of AXA equitable corporate benefits, wrote to plaintiff's counsel on behalf of the plan administrator, denying plaintiff's claim for an additional lump sum amount. Dkt. #113-3. Grevelding rejected plaintiff's argument that the PBGC rate applicable under the 1994 Plan applied to the calculation of his lump sum payment, stating that the lump sum benefit was calculated properly using the IRC § 417(e) "segment rate" made applicable to participants by the July 16 amendment. Grevelding stated that § 417(e) "required" the Plan to use the segmented rate to calculate lump sum payments. Also, Grevelding stated that the application of the segment rate did not violate ERISA or the Plan by reducing plaintiff's accrued benefit. The plan defines "accrued benefit" as a "straight life annuity." She added that because plaintiff's "benefit calculated as a Straight Life Annuity has remained constant and has not been affected by amendments to the Plan," the statutory and Plan restrictions on amendments reducing accrued benefits were not implicated. Id.

In a letter dated August 17, 2009, plaintiff appealed the administrator's determination. Dkt. #113-6. He reiterated his contention that the current PBGC rate applied to conversion of his accrued benefit to a lump sum form. In a letter dated November

3, 2009, the benefit appeals committee denied plaintiff's claim. Dkt. #27-10. The committee stated that plaintiff's accrued benefit, defined in the Plan as a straight life annuity, had not been reduced by any plan amendment. Id. at 6. Rather, plaintiff's straight life annuity was calculated at $1,888.46 a month in both 1999 and 2009. The committee also quoted Treasury Regulation 1.417(e)-1(d)(10)(v), which states that "a participant's accrued benefit is not considered to be reduced in violation of [IRC §] 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan" so long as a lawful interest rate is adopted. Id. In addition, the committee stated that the Plan's preamble did not provide protection to plaintiff from the amendment because it provides an express exception for amendments "otherwise made applicable to former employees." Id. The exception was satisfied, the committee concluded, because the amendment changing the relevant interest rate was made applicable "to Participants who commence payments after December 31, 1999." The committee concluded that "the interest rate prescribed by the [Plan] document at the time of the benefit payment is the correct interest rate." Id.

OPINION

The parties have filed cross motions for summary judgment on plaintiff's claim that defendants' calculation of his lump sum benefit using the segment rate instead of the PBGC rate violated the Plan and thus, was arbitrary and capricious. Plaintiff contends that the administrator's decision violated two provisions of the 1994 plan, namely, the anti-cutback provision in § 13.1.1 and the preamble. Defendants contend the plaintiff's claim is barred by provisions in the Pension Protection Act of 2006, which according to defendants' interpretation, provide immunity from challenges brought under ERISA *or* benefit plans to plan sponsors that amended the interest rates in their plans in response to the Act. Also, defendants contend that the administrator's and benefits appeals committee's interpretation of the Plan and their resulting benefit calculation were plainly correct, or at least reasonable, under the relevant language of the Plan.

Before turning to the parties' arguments, it is important to point out that plaintiff is not arguing that the administrator's calculation of his lump sum benefit violated ERISA's anti-cutback provision, 29 U.S.C. § 1054(g), which prohibits a plan from decreasing accrued benefits, including early retirement benefits, or eliminating optional forms of benefits. As plaintiff recognizes, the Pension Protection Act of 2006 provides an exemption from ERISA's anti-cutback provision for certain amendments to the discount rate used to calculate the present value of a participant's benefit. Pub. Law. 109-280, § 1107(a)(2) ("If this section applies to any pension plan or contract amendment . . . such pension plan shall not fail to meet the requirements of" the anti-cutback provisions found in ERISA and the Internal Revenue Code). Plaintiff contends only that application of the segment rate violates the terms of the Plan itself, which plaintiff contends provides greater protection than ERISA's anti-cutback provision. E.g., Call v. Ameritech Management Pension Plan, 475 F.3d 816, 822-23 (7th Cir. 2007) (plan amendment that specified two options for calculating lump sum distribution violated plan's own anti-cutback provision, even though it was exempted by statute from anti-cutback section of ERISA).

Also, plaintiff is not arguing that any rate other than the one in effect at the time he terminated his employment, the PBGC rate, should apply to his benefit calculation. As I pointed out in the order on defendants' motion to dismiss, at the time that plaintiff requested and received his lump sum payment, defendant MONY had not yet amended the Plan to adopt the segment rate. Until July 2009, the rate specified in the Plan was the "annual rate of interest on 30-year Treasury securities, as specified in guidance published by the IRS." Thus, I raised the question whether the Treasury rate, rather than the segment rate or the PBGC rate, should apply. However, plaintiff has not argued that the 30-year Treasury rate should apply to his calculation. Instead, he has always maintained that the PBGC rate should apply, not any other rate specified in the plan. (I assume from this that the 30-year Treasury rate would not be as advantageous to him as either of the other two.) Thus, plaintiff has waived any argument that a rate other than the rate that was in existence at the time he terminated employment should apply to his benefit calculation.

Finally, it is important to note the appropriate standard of review in this type of

ERISA case. Where, as in the Plan at issue in this case, "a plan administrator is given discretion to interpret the provisions of the plan, the administrator's decisions are reviewed using the arbitrary and capricious standard." Wetzler v. Illinois CPA Society & Foundation Retirement Income Plan, 586 F.3d 1053, 1057 (7th Cir. 2009) (citing Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989)). "Under that standard, an administrator's interpretation is given great deference and will not be disturbed if it is based on a reasonable interpretation of the plan's language." Id.; see also Mein v. Carus Corp., 241 F.3d 581, 586 (7th Cir. 2001) (When "a plan gives the administrator discretion to interpret the plan, his interpretation is entitled to great deference and the determination will be sustained if it is reasonable."). The question for the court is whether the administrator's decision has "rational support in the record." Jenkins v. Price Waterhouse Long Term Disability Plan, 564 F.3d 856, 860-61 (7th Cir. 2009) (citation and quotation omitted).

1. Section 13.1.1

Section 13.1.1(b) of the Plan is an "anti-cutback" provision that prohibits plan amendments that would "reduce the Accrued Benefit of any Participant." Plaintiff contends that defendants violated § 13.1.1 by applying the July 16, 2009 amendment retroactively because the segment rate results in a lower lump sum distribution than the PBGC rate would. Thus, plaintiff contends, the amendment reduced his accrued benefit.

Plaintiff's argument relies on an interpretation of the term "accrued benefit" that includes the value of a lump sum distribution calculated using particular actuarial assumptions. The Plan defines accrued benefit as "the value of a Participant's Retirement Benefits expressed as a Straight Life Annuity." 1994 Plan, § 1.2. Plaintiff focuses on the word "value" in the definition, arguing that because all "retirement benefits" must be actuarially equivalent to the straight life annuity under the Plan, the accrued benefit is the "value" of the retirement benefit in each of its forms, including a lump sum payment. Thus, a reduction in value of a retirement benefit in any form, including a reduction of the lump sum payment through an amended discount rate, is a reduction in value in the accrued benefit.

Plaintiff is correct that the term "retirement benefit" is defined in the Plan to include all forms of benefit available under the Plan, and each optional form of benefit available to plan participants must be the actuarial equivalent of the straight life annuity. However, he is not correct when he interprets § 13.1.1 as precluding a reduction in a participant's "retirement benefit," or even the "value" of a retirement benefit generally; it precludes only a reduction in the "accrued benefit," which is defined as the "value of a Participant's Retirement Benefit *expressed as a Straight Life Annuity*." The straight life annuity is the only form of payment mentioned in the definition. Thus, the Plan defines accrued benefit in terms of one form of retirement benefits, the straight life annuity, and § 13.1.1 prohibits only a reduction in the value of a retirement benefit expressed in this form.

The interpretation of § 13.1.1 offered by the plan administrator and benefits appeals committee (and defendants in their summary judgment materials) rests on this limiting language in the definition of "accrued benefit." Specifically, the administrator and committee concluded that an amendment does not violate § 13.1.1 unless it reduces the value of a participant's benefit *when expressed as a lifetime annuity*. As the benefits appeals committee explained, the 2009 amendment that changed the interest rate used to calculate the present lump sum value of a lifetime annuity had no effect on the annuity itself; the annuity benefit calculation remained unaffected. For example, in plaintiff's case, the value of his retirement benefit stated in lifetime annuity form was calculated at $1,888.46 a month, both in 1999 and 2009. The change in the interest rate affected only the value of his benefit when expressed as a lump sum, not the value of the benefit when expressed as a lifetime annuity. Because, under defendants' interpretation, the value of the lifetime annuity is the only relevant value for purposes of § 13.1.1, the amendment did not "reduce the Accrued Benefit" in violation of the Plan.

It was not arbitrary or capricious for the administrator and the benefits appeals committee to conclude that use of the segment rate to calculate plaintiff's benefits did not impermissibly reduce his accrued benefits. Rather, they based their conclusion on a reasonable interpretation of the Plan's definition of "accrued benefit." Wetzler, 586 F.3d at 1057.

I am not persuaded by plaintiff's argument that the court of appeals' decision in Call, 475 F.3d 816, requires that plan's anti-cutback provisions be interpreted to provide protection where a statutory anti-cutback rule would not. In that case, the court considered whether a plan amendment that changed the actuarial assumptions used to calculate lump sum benefits violated the plan's anti-cutback rule. The plan's anti-cutback rule was very similar to the anti-cutback rule at issue in this case, providing that "no amendment will reduce a Participant's accrued benefit to less than the accrued benefit that he would have been entitled to receive if he had resigned . . . on the day of the amendment . . . and no amendment will eliminate an optional form of benefit with respect to a Participant or Beneficiary except as otherwise permitted by law and applicable regulations." Id. at 820. As in this case, it was undisputed that the amendment fell under an exception to ERISA's statutory anti-cutback rule.

In Call, the plan contained a definition of "accrued benefit" similar to the definition in this case. However, the court of appeals concluded that the definition did not govern the section of the plan containing the anti-cutback rule. Id. at 820. This was because the plan specified that only definitions in capital letters apply to sections other than the one in which the definition appeared. "Accrued benefit" was not in capital letters and its definition did not appear in the section containing the anti-cutback rule. Id. Additionally, the plan contained no other language limiting the effect of the anti-cutback rule. The court concluded ultimately that because the defendant did not limit the anti-cutback rule either through a narrow definition of "accrued benefit" or other language, the contractual provision was meant to provide protection broader than the statute.

Contrary to plaintiff's arguments, the court of appeals did not hold in Call that contractual anti-cutback provisions must always be read more broadly than ERISA's equivalent. The court focused on the particular plan language at issue in that case and noted that the plan could have provided protection equivalent to ERISA's by "say[ing] something like 'no amendment will eliminate an early-retirement or optional form of benefit . . . except as otherwise permitted by law and applicable regulations,'" id. at 821, or "by includ[ing] language . . . to that effect." Id. at 822. See also Kerber v. Qwest Pension Plan, 572 F.3d 1135, 1148 (10th Cir. 2009) (holding that contractual anti-cutback clause provided no greater protection than ERISA's anti-cutback rule).

Unlike in Call, the Plan relevant in this case defines "accrued benefit"; specifically, as the value of a participant's retirement benefit when "expressed as a Straight Life Annuity," thereby defining it solely in terms of the annuity value of the benefit and distinguishing it from the interest rates used to calculate lump sum benefits. I conclude that the administrator's and benefits appeals committee's interpretation of the plan and calculation of plaintiff's benefit was not arbitrary and capricious.

2. The preamble

Plaintiff contends that the language of the Plan's preamble is an independent reason why the administrator was prohibited from applying the segment rate to calculate his lump sum benefit. The preamble requires the administrator to determine a participant's benefits under the Plan "solely under the terms of the Plan as in effect on the date of his or her termination of employment or retirement," "unless such person is thereafter reemployed and again becomes a Participant or unless [the amendment is] otherwise made applicable for former Employees." 1994 Plan, Purpose.

According to plaintiff, the preamble essentially locks in all plan provisions in effect at the date of termination, and because the PBGC rate was the rate in effect when he left MONY in 1996, that rate must be used to calculate his lump-sum distribution. Plaintiff acknowledges that the final phrase of the preamble states that amendments "otherwise made applicable to former employees" may affect the determination of a participant's rights. However, he contends that this provision is irrelevant to this case for two reasons.

First, plaintiff interprets the word "otherwise" to mean that an amendment cannot be made applicable to former employees merely by its own terms. Rather, plaintiff contends the amendment must be made applicable to former employees by means *other than* the amendment itself, such as by law, regulation or agreement. Because the 2009 plan amendment purported to apply to former employees only through its own terms, not through some separate law, regulation or agreement, plaintiff contends that it does not qualify as an amendment made "otherwise" applicable.

It was not unreasonable for the administrator and benefits appeals committee to reject plaintiff's interpretation of "otherwise." Nothing in the preamble or anywhere else in the plan suggests that plan amendments can be made applicable to former employees only through operation of law or agreement. Rather, as discussed above, § 13.1.1 states that MONY "shall have the exclusive right to amend and/or terminate the Plan, at any time by an instrument in writing, *effective retroactively* or otherwise," except under several conditions explicitly set forth in the section. 1994 Plan § 13.1.1(b). Thus, both the preamble and § 13.1.1 expressly contemplate post-termination amendments that affect the rights of former employees.

As noted, the preamble refers to two ways in which a post-termination amendment applies to establish the rights of a former employee: (1) when the employee has returned to employment; or (2) when an amendment is "otherwise made applicable" to former employees. The administrator and benefits appeals committee interpreted "otherwise" to mean that an amendment can be made applicable to a former employee by a return to employment, or by express language making the amendment applicable to former employees. The 2009 plan amendment stated explicitly that it had been made applicable to former employees, stating that the new, statutory segment rate is applicable to lump sums "payable to Participants who commence payments after December 31, 2009." Because a participant who commences benefits is necessarily a "former employee," the administrator and benefits appeals committee concluded that the amendment applied retroactively and that the preamble did not bar its application. This interpretation was not unreasonable.

Plaintiff's second argument is that even if a plan amendment could be applied retroactively to "former employees" without violating the preamble, the 2009 amendment does not apply to "former employees" because its terms applied to lump sums "payable to *Participants* who commence payments after December 31, 1999." Plaintiff contends that "participants" are not the same as "former employees." According to plaintiff, the 1994 version of the plan defined "participant" to include only *current* employees. The 1994 plan defined "participant" to mean "any Eligible Employee who accrues benefits in the Plan"; "eligible employee" in turn was defined as a subset of all "employees"; and "employee" was defined to include only those "engaging in rendering personal services under the direction or control of the Employer"; thus, only current employees, according to plaintiff. Under plaintiff's theory, he stopped being a "participant" in 1996, when he terminated his employment.

It was not unreasonable for the administrator and benefits appeals committee to reject plaintiff's interpretation of "participant" and "former employee." Despite the definitions of "participant," "eligible employee" and "employee" in the 1994 plan, plaintiff's interpretation of "participant" as excluding former employees makes no sense in light of other provisions of the plan. Young v. Verizon's Bell Atlantic Cash Balance Plan, 615 F.3d 808, 823 (7th Cir. 2010) ("Contracts must be read as a whole, and the meaning of separate provisions should be considered in light of one another and the context of the entire agreement."). For example, if plaintiff had ceased being a participant when he terminated his employment, he would not have been entitled to receive benefits upon reaching retirement age because the provisions in the plan provide for retirement benefits only to "participants." 1994 plan, § 6.3 ("Upon the Separation from Service of any Participant for any reason other than death, the value of the vested interest of the Participant's defined Benefit shall be payable on the first of the month . . . following attainment of Early or Normal Retirement Age, provided that the Administrator receives all of the necessary forms from the Participant."). This provision would make no sense if "participant" did not include "former employees."

Additionally, the plan equates former employees with participants, stating in one provision that "[i]f a *former Employee* who terminates Service with a vested Defined Benefit dies on or before the Earliest Retirement Act, leaving a Surviving Spouse, the Surviving Spouse will receive the same benefit that would be payable to a Surviving Spouse if *the Participant* had," for example, "died on the day after the earliest retirement age." 1994 Plan, § 6.2.2(b). Similarly, the 1994 plan uses the term "deceased Participant" multiple times.

1994 Plan, §§ 1.71, 6.2.2(b). Under plaintiff's interpretation of "participant," that term would be nonsensical.

Finally, a plan amendment like the July 16, 2009 amendment that is made applicable to participants who commence benefits after a certain date, necessarily applies to former employees. Generally, benefit payments are payable only after retirement or death, so a person who commences benefit payments must be a former employee. Thus, it was not unreasonable for the plan administrator and benefits appeals committee to conclude that the preamble did not bar application of the 2009 amendment to plaintiff.

3. Plaintiff's remaining arguments

Plaintiff makes two additional arguments about why the court should not give deference to the administrator's and benefits appeals committee's decisions. First, the administrator's initial decision shows that she misunderstood the law that applied to the calculation of lump sum benefits. She insisted that § 417(e) of the Internal Revenue Code "sets forth the interest rate and the mortality tables that *must* be used to convert to a lump sum" and that "the Plan is *required* to calculate lump sums as provided by Section 417(e)." Dkt. #113-3, at 3 (emphasis added). This was incorrect. Section § 417(e) specifies the maximum interest rate that may be used to determine the actuarial equivalent of the accrued benefit, but a pension plan is free to use a different discount rate as long as the present value calculated is "not less than the present value calculated by using the applicable mortality table and the applicable interest rate." 26 U.S.C. § 417(e)(3)(A). Plaintiff contends that because the administrator's decision relied on an incorrect interpretation of the law, it is not entitled to deference.

However, the benefits appeals committee was the final decision maker with regard to plaintiff's claim and it did not make the same mistake. There is no language in the committee's decision suggesting that it believed the Plan was required to adopt the segment rate. Although the committee stated it was upholding the administrator's decision, it did not say that it was adopting all of the administrator's reasoning. Additionally, although the committee stated that the Pension Protection Act imposed certain mandatory requirements on the administrators of pension plans, it did not say that the Plan was required by the Act to use the segment rate to calculate the lump sum benefits of former employees.

Plaintiff's second argument is that the administrator and committee made a "mistake of fact" by concluding that the 2009 segment rate, rather than the 30-year Treasury rate, was the rate prescribed by the Plan at the time his benefits were calculated. However, as explained above, plaintiff has never argued that the 30-year Treasury rate should apply to his benefit calculation and he is not arguing that it should be applied now. Rather, plaintiff has always maintained that the PBGC rate should apply. Plaintiff does not explain why it matters to his claim that the committee thought the segment rate, rather than the Treasury rate, was the current rate prescribed by the Plan.

Finally, even if the administrator and benefits appeals committee's made some mistakes in their decision regarding the law or facts, these mistakes do not undermine my conclusion that they based their decisions on a reasonable interpretation of the Plan language. "Absent special circumstances, such as fraud or bad faith, the plan administrator's decision may not be deemed arbitrary and capricious so long as it is possible to offer a reasoned explanation, based on the evidence, for that decision." Wetzler, 586 F.3d at 1060 (citation omitted). In this case, defendants have offered a reasoned explanation based on the Plan.

Because I conclude that defendants' decision was reasonable, I need not consider defendants' argument that plaintiff's claim is barred by the Pension Protection Act of 2006. Additionally, because the class members' claims are grounded on the same arguments regarding interpretation of the preamble and anti-cutback provision as plaintiff's claims, I will grant defendants' motion for summary judgment with respect to plaintiff's and the class members' claims. I will deny plaintiff's motion in full.

ORDER

IT IS ORDERED that

1. Plaintiff John Dennison's motion for summary judgment, dkt. #101, is DENIED.

2. The motion for summary judgment filed by defendants MONY Life Retirement Income Security Plan for Employees, MONY Life Insurance Company and the administrator of the plan, dkt. #104, is GRANTED as to plaintiff's claims and those of the plaintiff class.

3. Plaintiff's motion for leave to file a reply to defendants' response to plaintiff's proposed findings of fact, dkt. #123, is GRANTED.

4. Defendants' motion to strike plaintiff's reply, dkt. #124, is DENIED.

5. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 15th day of May, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge