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Newswatch

Judge Rules Age Bias in IBM Pension Switch

by *Mary Lou Roberts*
Industry Reporter

August 04, 2003 — In 1999, IBM [retooled](#) its pension plan, spurring a lawsuit and an exodus of hundreds of workers upset over changes that they felt penalized older employees. Last week, those employees were vindicated when a federal judge in Illinois judge found that IBM's pension switch had indeed been a form of age discrimination.

"I cried when I heard the verdict," says Kathi Cooper, lead plaintiff in the lawsuit. "I was ecstatic. It's been 4 1/2 years of stress."

Thursday afternoon, G. Patrick Murphy, chief district judge of the Southern District of Illinois, ruled that, when IBM switched its workers from a traditional pension plan to a cash-balance plan, it did so at the expense of older workers.

IBM's previous traditional defined benefit pension plan calculated pensions based on the employee's years of service and salary at retirement. In such plans, employees typically accrue a large percentage of their benefits in the final years of their employment.

The new cash-balance plan, on the other hand, accumulates steadily and more evenly during each year of employment. This formula, employees claimed, leads to a reduced pension for workers who have been with the company longer and who, therefore, are older.

IBM's announcement of the switch back in 1999 caused such a storm of protest from employees who saw their anticipated retirement dollars evaporating that the company made a partial compromise and allowed employees age 40 and older with 10 or more years of service to remain in the traditional plan. But that was clearly not enough for many of the employees who went ahead with the suit.

Thursday was their day to shine. By noon on Friday, Cooper had received more than 1,000 phone calls and emails from fellow IBMers thanking her for standing on the front line in this battle. The effort and the stress have been worth it, she believes. "The train had to be stopped," she says. "These pension formulas are bad for America. It's all part of the corporate greed that is left over from the '90s."

It took little time for IBM to respond to both its employees and the public about the verdict. A press release issued by the company Thursday quickly declared that it would appeal the case to a higher court.

Employees also received an internal memo from Randy MacDonald, IBM senior vice president of human resources, which quickly found its way to a number of public and employee-based Web sites and discussion group lists. The memo contained words that angered some IBMers even more: "IBM has been defending this lawsuit to preserve our

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pension plan. Despite our efforts, earlier this afternoon, the U.S. Federal District Court in Illinois ruled that IBM's current pension formulas violate the age discrimination provisions of federal pension law. We strongly disagree with this ruling. IBM will appeal, and we will prevail."

Garrett Lanzy, vice president of Alliance@IBM and a senior engineer at IBM in Rochester, notes that the "general feeling of people in Rochester is that Randy MacDonald's memo is trying to scare people that this court decision will threaten people's pension plans — but employees aren't really panicking."

There was much discussion about this memo and the court ruling on the publicly accessible IBM Internet discussion groups such as the IBM Pension and Retirement Issues Yahoo group, including an entire thread titled "Watch out for retaliation!" as IBMers vented.

Is retaliation a major concern? You bet, says Cooper. She works as a business supervisor in IBM Global Services Business Controls finance and planning, noting that her last promotion and raise was in 1999, preceding the filing of the lawsuit.

Lanzy tells of a "company-wide 'Values Jam' — an electronic news group — held by IBM last week. Sam Palmisano had asked all employees to contribute their ideas about how IBM should focus on corporate values." Some of the ideas discussed, says Lanzy, were to return to respect for the individual and customer service. Then, Lanzy says, "late Thursday, someone suggested that IBM not appeal this case and use this as a new starting point to regain the trust of the employees. That idea resonated with a lot of people."

But it's not likely to happen. IBM's press release and MacDonald's memo were emphatic about the company's intention to appeal. And whether or not this ruling is overturned will mean a lot to more than IBM and its employees. Analyst Bob Djurdjevic, president of Annex Research, points out that "this ruling is not just about IBM, but about hundreds of other companies as well."

Watson Wyatt, a "human capital" consulting firm that has aided many large corporations in converting to cash balance pension plans, issued a press release on Friday that warned that the ruling "could severely undermine the U.S. pension system." Wyatt warns that, if the appeals court doesn't reverse the ruling, it could spur companies to freeze their pension plans and offer only a 401(k) plan, which would shift all of the investment risk onto employees. Quoting Eric Lofgren, global director of Wyatt's benefit consulting group, the press release states that "tens of millions of employees could ultimately have reduced benefit security if this verdict isn't corrected."

This issue is not likely to be resolved quickly. Cooper believes that the appeals process will take at least another two to three years. And, she reports, "Judge Murphy himself has said that this case is destined for the Supreme Court."

This is part of the reason, Djurdjevic believes, that the stock market "shrugged off the news." (IBM stock rose two cents on Friday.) "It took three years for the case to get this far," he says. "It will be several more years before this is really decided. In the meantime, we have no real specifics from the judge or from IBM on how to gauge the financial impact."

Still others believe that there is the possibility of Congressional legislation that will decide the issue. Karen Friedman, a spokesperson for Washington, D.C.-based Pension Rights Center, calls the ruling a "victory for employees everywhere and a message to other companies." But, she believes that "this will be the next big debate in Congress. Congress will have to define new kinds of hybrid plans that are not age discriminatory."

Cooper realizes that the four-year battle is far from over. But she has no regrets about the time and energy and stress this has put on her life and her job. "There comes a time," she says, "when you have to decide what you're willing to stand up for and whether or not you can live with yourself. And I'll do anything I can to show the baby boomers what's

happening to them.”

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