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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF an Intended Decision of the Superintendent of Financial Services dated March 7, 2013, to make Orders under sections 77.3(1)(a) and (b) and section 87 of the PBA relating to the Navistar Canada Inc. Non-Contributory Retirement Plan, Registration Number 0351684.

TO:

Navistar Canada Inc.

5500 North Service Road, Suite 401
Burlington ON L7L 6W6 Canada

Attention:

Bruce Dobie
Director, Human Resources

Plan Administrator and Employer

ORDER

ON OR ABOUT the 7th day of March, 2013, the Superintendent of Financial Services (the “Superintendent”) issued a Notice of Intended Decision (the “NOID”) in respect of the Navistar Canada Inc. Non-Contributory Retirement Plan, Registration Number 0351684 (the “Plan”).

A REQUEST FOR HEARING dated April 3, 2013, was received by the Financial Services Tribunal (the “Tribunal”) in connection with this matter.

ON JUNE 20, 2013, the Tribunal held a pre-hearing conference and ordered that CAW-Canada (now UNIFOR) and its Locals 127 and 35 were granted full party status.

ON OCTOBER 10, 2013, the Tribunal heard and dismissed a jurisdictional motion brought by Navistar Canada Inc. (“Navistar”) for an order that the Superintendent and the Tribunal had no jurisdiction to rule on the applicability of the 0.9 years bank pensionable service credit under section 7.03(b)(iii) of the Plan.

ON NOVEMBER 4, 2013, the Tribunal issued its Reasons for Decision for dismissing the jurisdictional motion brought by Navistar.

ON APRIL 11, 14, and 15, 2014, the Tribunal held the hearing on the merits.

ON JULY 11, 2014, the Tribunal issued its Reasons for Decision (the “Decision”) which contained an Order (the “Tribunal’s Order”) that directed the Superintendent to order a partial wind up of the Plan effective July 28, 2011, amended as follows:

- Navistar is directed to prepare and file a wind up report as soon as practicable that:
 - i) Includes all Plan members who ceased to be employed between February 1, 2009, up to and including June 28, 2011;
 - ii) Credits all such members with up to 0.9 years of Credited Service under section 7.03(b)(iii) of the Plan regardless of their return to work, such additional credited service not to go beyond the later of the individual’s termination date or effective wind up date of July 28, 2011; and
 - iii) Provides all eligible Plan members affected by the partial wind up whose age and continuous service or Plan membership equals 55 years or more with the SER Benefit as defined in section 1.03 of the Plan;
- Navistar is ordered to provide proof to the Superintendent that the pensions or commuted value of the pensions for all members who are not affected by the partial wind up and are entitled to 0.9 years of credited service under section 7.03(b)(iii) of the Plan have been re-calculated to include these benefits, or in the case of deceased members where there is no continuing benefit payable, to the deceased member’s beneficiary;
- Navistar is ordered to provide proof to the Superintendent that the pensions or commuted value of the pensions have been re-calculated to include the SER Benefit for all members who are not affected by the partial wind up and who are entitled to the SER Benefit in section 1.03 of the Plan by virtue of being 55 years of age, but not age 65, with 10 years of credited service under the Plan on the date that they retired, and provided that they were not discharged for cause. In the case of deceased members with such an entitlement, Navistar shall provide proof of payment to the deceased member’s beneficiary.

The Decision also stated that for the purpose of implementing the Tribunal’s Order, the Tribunal remained seized of all issues relating to the implementation of its orders herein, and shall to the extent necessary adjudicate any related disputes that may arise between the parties.

ON AUGUST 12, 2014, Navistar filed an Amended Notice of Appeal of the Decision with the Ontario Superior Court of Justice Divisional Court.

ON APRIL 9, 2015, the Divisional Court heard the appeal.

ON JULY 3, 2015, the Divisional Court dismissed the appeal.

ON JULY 17, 2015, Navistar filed a Notice of Motion for Leave to Appeal the Divisional Court’s July 3, 2015, decision with the Court of Appeal.

ON DECEMBER 21, 2015, the Court of Appeal refused to grant the motion for leave to appeal.

For the reasons set out in the Decision, **I ORDER:**

1. The Navistar Canada Inc. Non-Contributory Retirement Plan, Registration Number 0351684 (the “Plan”), is partially wound up effective July 28, 2011.

2. Navistar Canada Inc. shall prepare and file within 60 days from the date of this Order a partial wind up report relating to the Navistar Canada Inc. Non-Contributory Retirement Plan, Registration Number 0351684, that shall include the following terms:
 - a) the partial wind up is effective July 28, 2011;
 - b) the partial wind up includes all Plan members who ceased to be employed between February 1, 2009, up to and including June 28, 2011;
 - c) all members affected by the partial wind up are credited with up to 0.9 years of Credited Service under section 7.03(b)(iii) of the Plan regardless of their return to work, such additional credited service not to go beyond the later of the individual's termination date or effective windup date of July 28, 2011; and
 - d) all eligible Plan members affected by the partial wind up whose age and continuous service or plan membership equals 55 years or more are provided with the SER Benefit as defined in section 1.03 of the Plan.
3. Navistar shall provide proof to the Superintendent within 60 days from the date of this Order that the pensions or commuted value of the pensions for all members who are not affected by the partial wind up and are entitled to 0.9 years of credited service under section 7.03(b)(iii) of the Plan have been re-calculated to include these benefits, or in the case of deceased members where there is no continuing benefit payable, to the deceased member's beneficiary.
4. Navistar shall provide proof to the Superintendent within 60 days from the date of this Order that the pensions or commuted value of the pensions have been re-calculated to include the SER Benefit for all members who are not affected by the partial wind up and who are entitled to the SER Benefit in section 1.03 of the Plan by virtue of being 55 years of age, but not age 65, with 10 years of credited service under the Plan on the date that they retired, and provided that they were not discharged for cause. In the case of deceased members with such an entitlement, Navistar shall provide proof of payment to the deceased member's beneficiary.

DATED at Toronto, Ontario, this **23rd** day of **December, 2015**.

Original Signed By

Gino Marandola
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial
Services

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