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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 a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under section 87(2)(c) of the *PBA* relating to the DRS Technologies Canada Company Employees Pension Plan, Registration Number 1040112

NOTICE OF INTENDED DECISION

TO:

C.H.

AND TO:

DRS Technologies Canada Ltd.
100-700 Palladium Drive
Kanata, ON K2V 1C6

Attention:

Tracey McDonald
Senior Director, Human Resources
Employer & Administrator for the Plan

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the DRS Technologies Canada Company Employees Pension Plan, Registration Number 1040112, (the “Plan”) under section 87 of the *PBA* that DRS Technologies Canada Ltd. permit its employee C.H. to purchase membership in the Plan from October 29, 1997 to December 31, 2003.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended**

Decision is served on you.¹ A copy of that form is included with this Notice of Intended Decision. Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, subsections 89(8) and 89(9) of the *PBA* provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the "Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the *PBA* and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the Order refusing to permit C.H. to purchase membership in the Plan from October 29, 1997 to December 31, 2003 pursuant to section 87(2)(c) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. They may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

REASONS FOR INTENDED DECISION

1. DRS Technologies Canada Ltd. ("DRS") is the employer and administrator of the Plan, which is a combination defined benefit/defined contribution single employer pension plan that was established effective October 29, 1997.
2. C.H. is an employee of DRS and was an employee of Spar Aerospace Limited ("Spar") prior to the sale of the assets of Spar's parent company, Spar Applied Systems and Spar Aerospace (UK) Limited, to DRS effective October 29, 1997. C.H.'s employment with Spar was transferred to DRS as part of the sale.
3. While C.H. was employed by Spar, Spar had a pension plan, the Spar Aerospace Limited Pension Plan for Ontario Non-Represented Employees (the "Spar Plan"). The Spar Plan was optional, and C.H. opted not to join the Spar Plan.

4. As part of the agreement of purchase and sale, DRS agreed to adopt a defined benefit retirement plan as at the transaction closing date that would cover the “employees who as of the Closing Date, participated in, or who were in the process of satisfying the eligibility requirements for participation” in the Spar Plan. DRS agreed that the new plan would be substantially similar to the Spar Plan and that it would provide benefits that were no less favourable than the benefits provided by the Spar Plan.
5. DRS provided C.H. with a memo dated October 24, 1997 stating that the terms of employment (including the pension) with DRS would be no less favourable in aggregate than the terms and conditions of employment with Spar immediately before the sale.
6. DRS provided a memo to “All Permanent Employees” on October 30, 1997 regarding “Benefits Transition”. This memo stated that the Spar Plan would be transferred to DRS, a new pension plan would be registered with the Pension Commission of Ontario, and contributions would continue to be made and held in a trust account until the new plan was registered.
7. The Plan provided on inception that a full time permanent employee who was not a member of the Spar Plan was entitled, but not required, to become a member of the Plan after the first day of the month next following the completion of no less than 12 months of service with DRS.
8. The Plan also provided on inception that information regarding the Plan shall be provided to a Permanent Employee who becomes eligible to become a member of the Plan within 60 days prior to the employee’s eligibility date.
9. The Plan does not contain a provision allowing an employee or member of the Plan to purchase retroactive membership in the Plan.
10. C.H. was eligible to join the Plan as at October 29, 1998, after he had completed 12 months of service with DRS.
11. In 2004, C.H. requested DRS to join the Plan and to be permitted to buy back his service to the inception of the Plan as at October 29, 1997. DRS enrolled C.H. in the Plan effective January 1, 2004, but did not permit him to buy back service to the date of the Plan’s inception.
12. Section 25(1) of the *PBA* states (and stated in 1997) that the administrator of a pension plan shall provide to each person who will be eligible or is required to become a member of the pension plan:
 - a. an explanation of the provisions of the plan that apply to the person;

b. an explanation of the person's rights and obligations in respect of the pension plan;
and

c. any other information prescribed by the regulations.

13. Subsection 25(2) of the *PBA* further states that the administrator shall provide the information mentioned in subsection 25(1) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer within the prescribed period of time after the date on which the person becomes employed.
14. Section 38(c) of Regulation 909 states that the information referred to in subsection 25(1) of the *PBA* shall be provided to a person who is eligible to become a member of a pension plan upon commencing employment, within 60 days after the person commences employment.
15. Clause 87(2)(c) of the *PBA* states that subject to section 89, the Superintendent may make an order requiring an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds, that the administrator, employer, or other person is contravening a requirement of the *PBA* or regulations.
16. The Superintendent is of the opinion, upon reasonable and probable grounds, that although DRS may have contravened section 25 of the *PBA* by not providing notice of the Plan to C.H. in accordance with that section, C.H. was aware of the Plan's existence and of his right to join the Plan through the general communications from DRS and through his previous employment with Spar. The Superintendent is therefore of the opinion that this is not an appropriate case to exercise his discretion under section 87 of the *PBA* to order that DRS allow C.H. to purchase membership in the Plan retroactive to the Plan's inception.
17. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, **April 10 , 2015.**

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

¹NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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