

FSRA

Financial Services Regulatory
Authority of Ontario

Office of the
Chief Executive Officer



ARSF

Autorité ontarienne de réglementation
des services financiers

Bureau du
directeur général

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), in particular section 87;

AND IN THE MATTER OF a Notice of Intended Decision of the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the "Chief Executive Officer") respecting the Pension Plan for Employees of Hewlett Packard Enterprise Canada Co. (for Former EDS Retirement Plan Members), Registration Number 0911271 (the "Plan").

TO:

F.B.

Retired member of the Plan

AND TO:

Borden Ladner Gervais
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto, ON M5H 4E3

Attention: Markus Kremer and Veronica Sjolin

Legal Counsel for Hewlett Packard Enterprise Canada Co.

NOTICE OF INTENDED DECISION

TAKE NOTICE THAT pursuant to section 87 of the Act, the Chief Executive Officer intends to refuse to order Hewlett Packard Enterprise Canada Co. ("Hewlett") to include in F.B.'s pensionable earnings a sum representing vacation time F.B. had not taken (the "Unused Vacation Time Amount").

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE "TRIBUNAL") PURSUANT TO SECTION 89(6) OF THE ACT. A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within

thirty (30) days after this Notice of Intended Decision is served on you. 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.

TAKE NOTICE THAT if no written request for a hearing is delivered to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, the Chief Executive Officer will refuse to make an order to Hewlett to include the Unused Vacation Time Amount in the calculation of F.B.'s pensionable earnings pursuant to section 87 of the Act.

In order to request a hearing, a completed Request for Hearing Form (Form 1) must be delivered to the Tribunal within thirty (30) days after this Notice of Intended Decision is served. The form must be mailed, delivered, faxed, or emailed to:

Address: Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. The 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 extension 7294.

REASONS FOR INTENDED DECISION

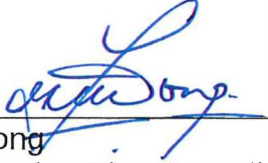
1. The Plan is a single employer combined defined benefit and defined contribution pension plan that was established on March 1, 1985.
2. Hewlett Packard Enterprise Canada Co. ("Hewlett") is the employer, sponsor, and administrator of the Plan.
3. F.B. is a retired member of the Plan who took an enhanced early retirement as of November 30, 2012.
4. At the time F.B. retired, pensionable service under the Plan was calculated on a final average earnings basis. "Final Average Earnings" was defined in the Plan text as meaning the average of a Member's highest 5 discrete periods of 12 consecutive months of Earnings during the Member's final 120 consecutive

calendar months of Continuous Service.

5. Amendment Number 5 to the Plan was effective January 1, 2011, and stated that "Final Average Earnings" for a full time employee was determined based on the remuneration paid to a member of the Plan including "base pay" and eligible commissions but "excluding bonuses, overtime pay, and any other forms of compensation". The amount of taxable benefit in respect of the exercise of any stock options was also excluded.
6. The previous definition of "earnings" in the Plan included structured bonus plans, performance-related bonuses, commissions, overtime pay, and the taxable benefit in respect of certain stock options that were available to members.
7. The definition of "Final Average Earnings" in Amendment Number 5 to the Plan applied to the calculation of F.B.'s pension under the Plan.
8. F.B.'s compensation scheme included paid vacation.
9. F.B. received vacation pay if and when he took vacation. Pursuant to the policies of Hewlett, F.B. was entitled to carry over 5 days of unused vacation each year.
10. Pursuant to the policies of Hewlett, when an employee does not take vacation, the unused earned vacation days are paid out when the employee terminates.
11. F.B. received an Unused Vacation Time Amount payout on December 15, 2012, with respect to 183.33 hours.
12. F.B. believes the calculation of Final Average Earnings should include the Unused Vacation Time Amount. F.B. also believes that Hewlett miscalculated the Unused Vacation Time Amount.
13. Hewlett takes the position that F.B. is not entitled to have the Unused Vacation Time Amount factored into his pensionable earnings because to include vacation pay in pensionable earnings would be double counting. The December 15, 2012 payment is also outside F.B.'s period of Continuous Service.
14. The Chief Executive Officer is of the opinion that the Unused Vacation Time Amount does not fall within Final Average Earnings as defined by the Plan.
15. Clause 87(1)(a) of the Act states that the Chief Executive Officer may make an order requiring an administrator to take any action in respect of a pension plan or a pension fund if the Chief Executive Officer is of the opinion, upon reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the Act, the regulations, or the pension plan.
16. Hewlett is administering the Plan in accordance with its terms by not factoring the Unused Vacation Time Amount into F.B.'s pensionable earnings.

17. The Chief Executive Officer intends to refuse to make an order.
18. Such further reasons as may come to my attention.

DATED at Toronto, Ontario, *October 4*, 2019.



Lester Wong
Head, Pension Plan Operations

By delegated authority from the Chief Executive Officer