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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 a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under subsection 87(2) of the PBA relating to the CROWN Metal Packaging Canada LP Pension Plan for Hourly Employees, Registration No. 0474213 (the “Plan”).

NOTICE OF INTENDED DECISION

TO:

CROWN Metal Packaging Canada LP

100-10 Ronrose Drive
Vaughan, ON L4K 4R3

Attention: Alex Packman
Director Compensation & Employee Benefits

Plan Administrator

AND TO:

**JD
Member**

I INTEND TO REFUSE TO MAKE AN ORDER under subsection 87(2)(a) of the PBA requiring the Plan Administrator, CROWN Metal Packaging Canada LP (“CROWN”) to recalculate the commuted value of the pension benefits transferred to JD pursuant to his election dated April 23, 2014 and the partial wind up of the Plan effective April 1, 2011.

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 subsection 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. 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 thirty (30) days after this Notice of Intended Decision is served on you, subsection 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 (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 thirty (30) days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the ORDER pursuant to section 89(7) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days of this Notice is served on you. The Request for Hearing form 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 Procedures 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 PROPOSAL

1. The Plan is a single employer, contributory, defined benefit pension plan.
2. The Plan was partially wound up effective April 1, 2011.
3. The partial wind up of the Plan was triggered by CROWN's announcement on March 30, 2010 that it was closing its operations at its 7250 Keele Street, Toronto, Ontario plant ("Plant 244") resulting in the termination of employment of approximately 130 Plan members.
4. JD was a member of the Plan and an employee working at Plant 244 on June 25, 2010 when his employment with CROWN was terminated due to the closure of Plant 244.
5. On the date of JD's termination, he was 53 years of age and had approximately 26 years of credited service under the Plan. His combined years of age and service equalled approximately 79.
6. JD was sent a partial wind up statement and election form dated February 27, 2014 ("PWU Statement"). The PWU Statement offered JD two options from which to elect with respect to payment of his pension benefits: an immediate pension commencing July 1, 2010 or a transfer of the commuted value of his pension benefits to a prescribed

retirement savings arrangement.

7. CROWN determined that JD was eligible under the Plan for an immediate unreduced pension due to his permanent layoff, age and service: a “70/75/80 Rule” pension pursuant to section 3.3(a) of the Plan text. JD elected a transfer of the commuted value of his pension benefits by completing the election form on April 23, 2014 and delivering it to CROWN.
8. CROWN transferred the commuted value of JD’s pension benefits to him in accordance with his election.
9. JD claims that section 74 of the PBA (grow-in benefits) entitles him to additional pension benefits under the Plan.
10. Subsection 74(1.3) of the PBA entitles a member of a pension plan whose age plus years of continuous service in the pension plan equals at least 55 on the effective date of the wind up (or other applicable activating event) to “grow into” an immediate unreduced pension, a deferred unreduced pension or a deferred reduced pension, depending on the terms of the pension plan:

(1.3) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least 55 on the effective date of the activating event has the right to receive,

 - (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
 - (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,
 - (i) the normal retirement date under the pension plan, or
 - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the activating event had not occurred and if the member’s membership continued to that date; or
 - (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the activating event had not occurred and if the member’s membership continued to that date.
11. Grow-in benefits under section 74 of the PBA do not entitle a pension plan member to an additional pension. Rather, section 74 permits members to whom the section applies to qualify for a pension under the pension plan that they would not otherwise qualify for because their employment was terminated and, as a result, would never be able to accrue the required years of age and service under the pension plan. In this way, section 74 of the PBA permits members to “grow into” a pension under the terms of the pension plan.
12. Pursuant to clause 74(1.3)(a), because JD had more than 55 years of age and continuous service (JD had 79) on the effective date of the partial wind up (April 1, 2011), he was entitled to receive an unreduced pension in accordance with the terms of the pension plan if under the terms of the Plan he was eligible for immediate payment thereof, which he was.

13. If JD had not been eligible to receive immediate payment of an unreduced pension under the terms of the Plan on April 1, 2011, pursuant to clause 74(1.3)(b), he would have been entitled to receive an unreduced pension under the terms of the Plan starting on his normal retirement date or on the date at which he would have been entitled to an unreduced pension under the terms of the Plan but for the partial wind up, whichever was earlier.

14. JD has asserted entitlement to an unreduced pension under both sections 3.3 and 3.5 of the Plan text. These two sections provide similar benefits at different retirement dates. As such, JD is effectively claiming entitlement to two pensions.

15. The eligibility requirements under sections 3.3 and 3.5 are as follows²:

² The Plan provides for different age and service requirements for each type of pension depending on class. The age and service requirements listed are those applicable to JD.

a. Section 3.3(a) – 70/75/80 Rule: not eligible for 62 & 10 Rule pension; layoff, permanent plant shutdown or physical disability, and age and service as follows:

i. age 50, 15 years Continuous Service and 70 years of combined age and Continuous Service,

ii. 15 years Continuous Service and 75 years of combined age and Continuous Service, or

iii. 20 years Continuous Service and 65 years of combined age and Continuous Service;

b. Section 3.3(b) – Rule of 65: not eligible for 62 & 10 Rule or 70/75/80 Rule pension, layoff, permanent plant shutdown or physical disability, and age and service as follows:

i. age 50, 15 years Continuous Service and 70 years of combined age and Continuous Service,

ii. 15 years Continuous Service and 75 years of combined age and Continuous Service, or

iii. 20 years Continuous Service and 65 years of combined age and Continuous Service;

c. Section 3.5 – 62 & 10 Pension: age 62 and 10 years of Continuous Service.

16. Sections 3.3 and 3.5 are mutually exclusive. Section 3.3(a) states:

If specified in the applicable Pension Agreement of Company Designation, where a member who:

(i) is not eligible to Retire on a 62 & 10 Pension;

...

the Member shall be entitled to Retire and receive... a 70/75/80 Rule Pension.

Similarly, section 3.3(b) states:

If specified in the applicable Pension Agreement of Company Designation, where a member who:

(ii) is not eligible to Retire on a 62 & 10 Pension or a 70/75/80 Rule Pension...

...

the Member shall be entitled to Retire and receive... a Rule of 65 Pension.

...

17. JD was eligible for a section 3.3(a) 70/75/80 Rule pension under any combination of his age and Continuous Service due to his layoff and the permanent shutdown of Plant 244. Because JD was entitled to a 70/75/80 Rule pension, he was not entitled to a section 3.3(b) Rule of 65 Pension, nor was he entitled to a section 3.5 62 & 10 Pension.
18. The pension JD was entitled to – a section 3.3(a) 70/75/80 Rule pension – was the best pension JD could have qualified for under the Plan: it provided the greatest additional benefits and the earliest unreduced retirement date.
19. Subsections 3.3(a) (70/75/80 Rule) and 3.3(b) (Rule of 65 Pension) of the Plan both entitle a member to:
 - a. a Special Retirement Supplement,
 - b. a supplement until age 65 determined pursuant to section 4.4, and
 - c. an Early Pension without reduction determined pursuant to section 4.4 (i.e. an unreduced pension payable at age 65).
20. Section 3.5 (62 & 10 Pension) entitles a member to:
 - a. a Special Retirement Supplement, and
 - b. an Early Pension determined pursuant to section 4.6 (i.e. an unreduced pension payable at age 65).
21. Subsection 87(2)(a) of the PBA states that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probable grounds that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan.
22. For the reasons set out above, the Superintendent is not of the opinion that the pension plan or pension fund is not being administered in accordance with the PBA, the regulations or the pension plan.
23. Such further and other reasons as may come to the attention of the Superintendent.

DATED at Toronto, Ontario, this **28th** day of **October, 2015**.

Original Signed By

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

1 NOTE - 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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