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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 section 74 of the *PBA* relating to the Retirement Plan for Martinrea Metallic Canada Inc., Registration Number 1048925.

NOTICE OF INTENDED DECISION TO REFUSE TO MAKE AN ORDER

TO:

T. B.

Former Member

AND TO:

Martinrea Metallic Canada Inc.
3210 Langstaff Road
Vaughan ON L4K 5B2

Attention:

Frank Burke
Executive Director, Corporate Finance
Employer and Administrator of the Plan

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Retirement Plan for Martinrea Metallic Canada Inc., Registration Number 1048925 (the “Plan”) under section 74 of the *PBA*.

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 refusal to make an order under section 74 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 DECISION

1. The Plan is a single employer defined benefit pension plan that was established on February 18, 1998.
2. Martinrea Metallic Canada Inc. (“Martinrea”) is the employer and administrator of the Plan.
3. T.B. was a member of the Plan. He was also a member of Unifor and was therefore subject to the terms of the collective agreement between Martinrea and Unifor.
4. On October 20, 2014, Martinrea posted a notice of layoff affecting approximately 130 employees. T.B. was one of the affected employees.
5. T.B. received a letter from Martinrea dated October 20, 2014, advising that due to reduced customer requirements, he was indefinitely laid off as of December 23, 2014.
6. T.B. resigned from his employment with Martinrea effective November 11, 2014.
7. Subsection 74(1) of the *PBA* states that a person is entitled to grow-in benefits if the person ceases to be a member of a pension plan on the effective date of a listed activating event. One of the activating events is the employer’s termination of the member’s employment, if the effective date of the termination is on or after July 1, 2012.

8. Subsection 74(1.1) of the *PBA* states that termination of employment is not an activating event if the termination occurs in such circumstances as may be prescribed.
9. Subsection 30.1(1) of Ontario Regulation 909 states that for the purposes of subsection 74(1.1) of the *PBA*, termination of employment is not an activating event if the employee is on temporary lay-off within the meaning of subsection 56(2) of the *Employment Standards Act, 2000* (“*ESA*”).
10. Subsection 56(1) of the *ESA* states that an employer terminates the employment of an employee for the purposes of section 54 of the *ESA* (entitlement to notice or pay in lieu of notice) if the employer lays the employee off for a period that is longer than the period of a temporary lay-off. Subsection 56(2) of the *ESA* defines temporary lay-off as, in the case of an employee represented by a trade union, a lay-off longer than a lay-off of 13 weeks in any period of 20 consecutive weeks and less than 35 weeks in any period of 52 consecutive weeks, where the employee is recalled within the time set out in the agreement between the employer and the trade union.
11. The collective agreement between Martinrea and Unifor contains an acknowledgement by Unifor that Martinrea has the right to lay off employees subject to seniority.
12. Article 10 of the collective agreement states that employment is terminated and seniority is lost if an employee is laid off for a period of 12 months or a period equalling the employee’s seniority, whichever is greater. Article 10 also states that employment is terminated and seniority is lost if the employee quits employment.
13. T.B. resigned from his employment before the lay-off period began to run. Therefore, his employment was not terminated by Martinrea.
14. T.B. claims that he was constructively dismissed. However, an employee who is subject to a collective agreement does not have the common law right to claim constructive dismissal.
15. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario this 14th day of November, 2016.

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.