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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 Make an Order under sections 87(1) and 87(2)(a) of the PBA relating to the Siemens Westinghouse Consolidated Pension Plan, Registration Number 1049907.

TO:

Siemens Canada Limited
1577 North Service Road East
Oakville ON L6H 0H6

Attention:

Mary Bissette-Clarke
Senior Director, Corporate Human Resources

AND TO:

DL

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER in respect of the Siemens Westinghouse Consolidated Pension Plan, Registration Number 1049907 (the “Plan”) under sections 87(1) and 87(2)(a) of the PBA requiring the Plan administrator, Siemens Canada Limited, to recalculate the retirement benefit payable to DL from the Plan so as to include in DL’s pensionable earnings the Transfer of Knowledge Premium and Component 1 payments paid to DL after his retirement.

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 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, sections 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 making of an order pursuant to sections 87(1) and 87(2)(a) 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. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON 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 PROPOSAL

I INTEND TO MAKE THE ORDER described in this Notice for the following reasons:

1. The Plan is a single-employer combined defined benefit/defined contribution pension plan covering the employees of Siemens Canada Limited. The Plan is administered by Siemens Canada Limited (the “Plan administrator”).
2. DL, a member of the Plan, elected early retirement effective June 30, 2013. DL commenced receiving a monthly pension benefit payable from the defined benefit portion of the Plan on July 1, 2013.
3. On July 8, 2013, DL received a \$6,000 payment from the employer that was identified by the employer as a “Transfer of Knowledge Premium” payment (the “Transfer of Knowledge Payment”). This payment was stated by the employer and Plan administrator to have been paid as part of the employer’s compensation programme to recognize career development and succession planning.
4. On December 19, 2013, DL received a further \$5,895 payment from the employer that was identified by the employer and Plan administrator as a reward for an employee’s hard work, and was described by the employer and Plan administrator as a Component 1 payment within the employer’s compensation or rewards programme.
5. The Transfer of Knowledge Payment and the Component 1 payment were not included in DL’s pensionable earnings for the purposes of calculating DL’s retirement benefit payable from the Plan.

6. The Transfer of Knowledge payment was excluded because it was determined by the Plan administrator to be a Component 3 payment. Component 3 payments were stated to fall outside of “Plan Earnings” which is the Plan’s definition of pensionable earnings.
7. The Component 1 payment was excluded from the determination of DL’s pensionable earnings as it was paid to DL after DL’s retirement from the Plan though it was paid within the Plan year.
8. DL objected to the exclusion of the Transfer of Knowledge Payment and the Component 1 Payment from the calculation of DL’s Plan retirement benefit.

The Plan Terms

9. Section 1.19 of the Plan text sets out the relevant definition of “Plan Earnings” under the Plan:

“**Plan Earnings**” shall mean the Member’s earnings received from the Company during the Plan Year and shall include base salary, overtime, shift premium, incentives based on annual performance, special recognition awards and retention/stay bonuses.
10. Plan Earnings as defined in the Plan is used in the calculation of a retired member’s monthly pension benefit payable from the Plan under sections 7.01(j) and 7.01(k) of the Plan text, subject to section 7.02 (Early Retirement Benefits). The monthly pension benefit for years after 1999 is based on a percentage of the Member’s Plan Earnings for each Plan Year (defined as a calendar year as per section 1.20 of the Plan text) as set out in section 7.01 of the Plan text.
11. The Superintendent has determined that the Transfer of Knowledge Payment falls within the definition of Plan Earnings under the Plan as it is a type of “special recognition award” or a “retention/stay bonus” received by DL during the Plan Year based on DL’s service.
12. The Superintendent has also determined that the Component 1 payment falls within the definition of Plan Earnings under the Plan as it is an “incentive based on annual performance”. This payment was also paid during the Plan Year as required by the definition of Plan Earnings.
13. Section 87(2) of the PBA states that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probable grounds:
 - a. that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
 - b. that the pension plan does not comply with this Act and the regulations; or
 - c. that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.
14. The Superintendent has determined that the Plan administrator failed to comply with the requirements of section 19(3)(a) of the PBA by failing to ensure that the pension plan is administered in accordance with the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration.

15. The Superintendent intends to order the Plan administrator to recalculate DL's monthly pension benefit from the Plan to include the Transfer of Knowledge Payment and Component 1 payment received by DL.

16. Such further and other reasons as the Superintendent may advise.

DATED at Toronto, Ontario, this 12th day of September, 2017.

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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