

**FINANCIAL SERVICES TRIBUNAL**

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

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the *Act* respecting a request by Mr. Hugo Jaik relating to the Electrical Industry of Ottawa Pension Plan, Registration No. 0586396 (the "Plan");

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**B E T W E E N:**

**HUGO JAIK**

Applicant

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES  
AND  
THE BOARD OF TRUSTEES OF THE  
ELECTRICAL INDUSTRY OF OTTAWA PENSION PLAN**

Respondents

**BEFORE:**

Ms. Anne Corbett  
Vice Chair of the Tribunal and Chair of the Panel

Ms. Heather Gavin  
Member of the Tribunal and of the Panel

Mr. John Solorsh  
Vice Chair of the Tribunal and Member of the Panel

**APPEARANCES:**

Mr. Hugo Jaik – Self Represented

For the Superintendent of Financial Services  
Ms. Deborah McPhail

For the Board of Trustees of the Electrical Industry of Ottawa Pension Plan  
Mr. Doug Parsons, Agent

**HEARING DATE:**

January 24, 2005

**REASONS FOR DECISION**

**Nature of the Application:**

This hearing results from the Notice of Proposal of the Deputy Superintendent, Pension Division to refuse to make an Order:

- (a) requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit; and
- (b) requiring the composition of the Board be amended to comply with the terms of the Plan in declaring that the decisions of the Board improperly constituted are invalid.

**Facts:**

Hugo Jaik is a former member of the Plan.

The Plan is a defined benefit pension plan that is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan and that covers members of the International Brotherhood of Electrical Workers, Local 586 (the "Union").

Mr. Jaik has been a member of the International Brotherhood of Electrical Workers, Local 586 since 1974. Mr. Jaik is 69 years of age and he is currently receiving a pension from the Plan.

The Plan is a non-contributory pension plan. Contributions are limited to employer contributions as negotiated under collective agreements between the Union and various employers.

The Plan was restated as of January 1, 1994. Prior to 1994, the Plan operated as a "Brotherhood System". Under the "Brotherhood System" all members received the same pension credits regardless of hours worked.

Amendment No. 5, to the 1994 Plan restatement, was passed by the Board on February 8, 2001. This amendment continues the "Brotherhood System" for pension accrual for hours worked prior to January 1, 1994 and provides for pension accrual based on the "Quasi-Hour Bank System" for service on or after January 1, 1994. The "Quasi Hour Bank System" provides members with accrued pension credits based on the number of hours worked. The Quasi-Hour Bank System is based on 1,500 working hours.

The formula in Amendment No. 5, which is the current Plan text, provides:

## **11 AMOUNT OF PENSION**

### **11.1 Pension Credits**

#### **11.1.1 Service Prior to January 1, 1994**

Each Member who retires at the Normal Retirement Date shall be entitled to a Retirement Pension calculated as:

- a) where Retirement occurs after January 1, 1988, but prior to July 1, 1988 - \$30 per month per year of Credited Service up to December 31, 1982, plus \$35.00 per month per year of Credited Service after December 31, 1982, or
- b) where Retirement occurs after June 30, 1988 - \$35.00 per month per year of Credited Service up to June 30, 1988, plus \$40.00 per month per year of Credited Service after June 30, 1988, up to December 31, 1993.

In addition, all active members who received pension credits for the month of December 1993 will receive a 5% increase on all Pension credits accumulated prior to January 1, 1994. All inactive and retired members who receive pension credits for the month of December 1993 will receive an increase not to exceed the lesser of 3% or the increase in the Consumer Price Index, on all Pension credits accumulated prior to January 1, 1994.

#### **11.1.2 Service After December 31, 1993**

##### **(a) Members who retired, terminated or died prior to January 1, 1999**

Members who are classified as "Hourly Workers" will receive a Pension credit of \$0.05 per month per hour worked after December 31, 1993.

Members who are classified as "Flat Rate Contributors" will receive a Pension credit of \$40.00 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, and \$62.50 per month per year of Credited Service after June 30, 1994 but prior to January 1, 1999.

**(b) Members who retired, terminated or died after December 31, 1998**

Members who are classified as "Flat Rate Contributors" will receive a Pension credit of \$42.40 per month per year of Credited Service after December 31, 1993 up to June 30, 1994, and \$66.25 per month per year of Credited Service from July 1, 1994 to December 31, 1998 and \$81.25 per month per year of Credited Service after December 31, 1998.

**11.1.3 Adjustment to Pension in Pay**

All retirees in receipt of a pension from the Plan as of December 31, 1998, will receive an increase not to exceed the lesser of 6% or the increase in the Consumer Price Index, effective January 1, 1999.

**Issue:**

At a pre-hearing conference held May 25, 2004, the parties agreed that the issue to be put before the tribunal was to be framed as follows:

Have the Applicant's pension benefits and ancillary benefits under the Plan been properly calculated? If not, what remedy should be granted by the Tribunal? Is the Applicant entitled to his legal costs?

The Notice of Proposal issued by the Deputy Superintendent also dealt with an issue raised by Mr. Jaik that the Board had not been properly constituted and that its actions were unauthorized. While that issue was not listed as an agreed issue it was raised in argument by Mr. Jaik and will be dealt with in these reasons for decision.

**Analysis and Conclusion:**

Mr. Jaik raised a number of arguments in support of his submission that his pension has not been properly calculated. In particular, he states that:

- the Plan was not a "Brotherhood Pension Plan" from the inception of the plan – he cites his yearly statements prior to 1998 from the Plan administrator, Coughlin & Associates in support of this

- the Plan was not a multi-employer pension plan under the *Pension Benefits Act* as the employers were affiliated within the meaning of the *Business Corporations Act*
- the Plan was not a defined contribution benefit plan as contributions are based on hourly amounts of money the members earn working including overtime
- in January 1991, the Union took a vote to implement the Brotherhood System
- contributions the employer made to the Plan from the members were tax exempt and the amount of the contributions was used to off-set RRSP contributions for that year – Mr. Jaik questioned how the Board can take contributions from members who are working and give it to the unemployed members as the credit belongs to the members who are working
- the Board of Trustees are in contravention of Section 14(1) of the *Pension Benefits Act* as they cannot reduce benefits because the plan is not a multi-employer plan
- contributions to the Plan are not limited to a fixed amount. For every hour the member is working, including overtime, the employer places contributions into the Plan – it is not a fixed amount

In response to Mr. Jaik's arguments, the Board and the Superintendent submit that the Plan, while not explicitly described as a Brotherhood Pension Plan operated as such prior to 1994. Funding received on behalf of working members was used to also provide pensionable service to non-working members as long as they remained in good standing with Local 586.

The Board also submits that the Plan has at all times been a multi-employer plan. The participating employers are independently owned companies. At one time there were over 200 different participating employers. There are now approximately 86.

In response to the argument that Mr. Jaik has raised that the Plan is not a defined contribution plan, the Board and the Superintendent contends that the contributions were indeed based on the number of hours the member worked, including overtime, however the pension credits earned prior to 1994 were assigned using a flat benefit formula which applied to both active and non-active members who met the eligibility criteria.

In response to Mr. Jaik's submission that the Board is in contravention of Section 14(1) of the *Pension Benefits Act*, the Board and the Superintendent submit that benefits accrued and vested prior to January 1, 1994 were not reduced and none of the relevant amendments reduced the pension benefits or ancillary benefits on a retroactive basis.

In response to Mr. Jaik's position that the contributions are not a fixed amount, the Board states that the hourly contribution rates are defined and fixed. The fact that a varying number of hours will be reported for each member does not mean that the Brotherhood credits were not a fixed amount or the hourly contribution rate was not a fixed amount.

The Board and the Superintendent's position is that the Applicant's pension and disability benefits have been properly calculated and that none of the Applicant's other allegations establish a contravention of the Act or the Plan.

### **Conclusions:**

While there were a number of issues raised in the submissions of the Applicant, which were responded to by the Board and the Superintendent, the issue before the Tribunal was the correct calculations of Mr. Jaik's pension.

With respect to that issue, the Tribunal finds that Mr. Jaik's pension has been correctly calculated in accordance with the applicable plan provisions: Articles 11.1.1(b) and 11.1.2(a) as set out in Amendment No. 5 to the 1994 Plan text. The formula is \$35.00 per month per year of Credited Service up to June 30, 1998, \$40.00 per month per year of Credited Service up to December 31, 1993, and \$0.05 per month per hour worked after December 31, 1993.

In both his written submissions and in his oral argument, Mr. Jaik made reference to a defined contribution benefit based on 2% of the contributions submitted to the Plan on his behalf. There is no such formula in the Plan text. Mr. Jaik's only support for his contention that he was entitled to a pension based on a 2% formula was those provisions of the Plan that set out the maximum pension allowable under the *Income Tax Act*. These sections of the Plan text do not provide a benefit formula but provide a limitation on the pension that can be paid. The calculation of the pension is done in accordance with sections of the Plan set out above.

With respect to the arguments raised by Mr. Jaik in support of his position that his pension has not been correctly calculated, we did not find any evidence which would support his submissions. In particular, there was no evidence that the Plan was not, as it appears to be on its face, a multi-employer pension plan or that the Board of Trustees was not properly constituted.

With respect to the submission that the Plan was not a Brotherhood Plan from inception, the Tribunal accepts the arguments of the Board and the Superintendent in this regard. The Plan was a Brotherhood Plan from inception until January 1, 1994. Members did not have to be working in order to accrue pension benefits. The only requirements were that a member of the Plan be a member of the Union and be ready, willing and able to work in the industry.

We do not find any contravention of the requirement of Section 14(1) of the *Pension Benefits Act* with respect to the amendments to the Plan that were submitted to us relevant to the arguments before the Tribunal. None of those amendments reduced the pension benefits or ancillary benefits on a retroactive basis.

**Decision:**

The Tribunal confirms the Notice of Proposal of the Superintendent that the Board of Trustees not be required to recalculate the pension and benefits of Mr. Jaik or to amend the composition of the Board.

**Costs:**

If any party wishes to make application for an order of costs in this matter, it may do so by written request filed with the Tribunal and served on the other parties within 30 days of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

**DATED** at the City of Toronto this 11<sup>th</sup> day of July, 2005.

“Anne Corbett”

Anne Corbett, Vice Chair of the Tribunal and  
Member of the Panel

“Heather Gavin”

Heather Gavin, Member of the Tribunal and  
of the Panel

“John M. Solursh”

John Solursh, Vice Chair of the Tribunal and  
Member of the Panel