

ONTARIO MUNICIPAL EMPLOYEES RETIREMENT SYSTEM

***In the Matter of an Appeal from the
Decision of the President
By “the Appellant” to the
Appeals Sub-Committee***

Heard on July 21, 2009

DECISION

Introduction

The Appellant brings this appeal to the Appeals Sub-Committee of the OMERS Administration Corporation (the “Committee”) from the February 27, 2009 decision of the President of OMERS pursuant to Section 41 of the OMERS Primary Pension Plan (the “Plan”). By this appeal, the Appellant asks the Committee to order that OMERS restore certain months of eligible service removed from the Appellant’s membership record in the Plan.

The Appellant was self-represented.

OMERS Administration Corporation (“OMERS AC”) was represented by OMERS Staff.

This appeal was considered in writing on July 21, 2009.

Background

The background to this appeal is as follows:

1. On May 15, 1995, the Appellant was hired by [Employer 1] as a continuous full-time employee and he enrolled in the Plan.
2. When he enrolled in the Plan, the Appellant transferred 227 months of “credited service” into the Plan from the [◆] Pension Plan (“◆ Pension Plan”).
3. Under Section 1 of the Plan “credited service” is defined as the years and part years of service of a member for which contributions under Section 11 of the Plan have been made and not refunded and includes service established for a member under Section 35 of the Plan providing for a permitted transfer to OMERS of an amount for the member from another pension fund or plan.
4. On February 27, 1998, the Appellant’s employment with [Employer 1] terminated. At that time, he elected to transfer out and receive the value of his credited service in the

Plan, in full satisfaction of all entitlements from the Plan. A total of 261 months of credited service was transferred out of the Plan (227 months of service referenced in paragraph 2 above and 34 months accrued by the Appellant in the Plan as an employee of [Employer 1]).

5. On October 9, 2001, the Appellant was hired as a continuous full-time employee of [Employer 2] and he re-enrolled in the Plan. At the time of his re-enrolment in the Plan, the Appellant chose not to buy back into the Plan any of his previously transferred out service (see paragraph 4).
6. In November 2001, when OMERS processed the Appellant's re-enrolment in the Plan, the Appellant's Plan record was credited with 261 months of "eligible service".
7. Under the Plan, eligible service is used in concert with credited service and a number of other factors to determine whether a Plan member is eligible to retire early with an unreduced early retirement pension.
8. "Eligible service" is defined in Section 23 of the Plan as the service of a member with an employer who participates in the Plan that is not credited service.
9. The definition of "eligible service" under the Plan is consistent with the definition of "early retirement eligibility service" under subparagraph 8503(3)(c)(iii) of the Income Tax Act Regulation ("ITAR") which requires that the service counting towards an early retirement benefit must be a period throughout which the member was employed by an employer who has participated in the pension plan or by a predecessor employer to such an employer.
10. OMERS AC asserts that only 34 months of the 261 months of service that the Appellant transferred out of the Plan in 1998 were properly credited to the Appellant's Plan record as eligible service upon his re-enrolment in the Plan. These 34 months of service represent the Appellant's employment with [Employer 1], an employer who participated in the Plan. OMERS AC asserts that the additional 227 months of service that were credited as eligible service in the Appellant's Plan record, were ineligible to be credited to the Appellant's Plan record as eligible service because they represented the

Appellant's service with the ♦ Pension Plan, an employer which does not participate in the Plan.

11. From 2001 to 2008, OMERS sent the Appellant annual pension reports showing the additional 227 months of service credited as eligible service.
12. On August 20, 2008, OMERS received a request from the Appellant for a buy back cost estimate for his previously refunded service. Upon processing the Appellant's request, OMERS discovered that the Appellant's Plan record had mistakenly credited the additional 227 months of previously refunded transferred-in service from the ♦ Pension Plan as eligible service.
13. On September 18, 2008, OMERS Staff wrote to the Appellant advising him that a mistake had been made, explaining why the additional 227 months of service recorded in his Plan record did not qualify as eligible service and advising him that the additional 227 months of service would be removed from his Plan record. The Appellant was also provided with a buy back cost estimate for his previously refunded service.
14. Without the additional 227 months of service recorded in his Plan record as eligible service, the Appellant is no longer entitled to retire with an unreduced pension when he reaches age 55 on December 21, 2011.
15. However, the Committee notes that if the Appellant decides to buy back the additional 227 months of service into the Plan (which would be recorded in the Appellant's Plan record as credited service), then the Appellant would still have enough combined eligible service and credited service to retire with an unreduced pension when he reaches age 55 on December 21, 2011.
16. On November 28, 2008, the Appellant wrote to the President of OMERS requesting that OMERS return the additional 227 months of service to his Plan record that were removed as eligible service. On February 27, 2009, the President of OMERS denied the Appellant's request. The Appellant appeals the President's decision.
17. In addition to appealing the President's decision, the Appellant requests that his buy back cost estimate be recalculated using 2001 valuations.

Pre-hearing Motion

On May 19, 2009, OMERS AC brought a pre-hearing motion seeking to exclude from the scope of this appeal the Appellant's supplementary request that his buy back cost estimate be recalculated using 2001 valuations. On May 29, 2009, the Committee considered and granted OMERS AC's pre-hearing motion with written reasons that were provided to the parties on June 1, 2009.

The Appellant's Submissions

In submissions dated March 22, 2009 and May 13, 2009 and responding submissions dated June 20, 2009, the Appellant advances two main arguments in support of his appeal:

1. **No error was made.** The Appellant argues that, based on his interpretation of certain excerpts of language contained in the May 2001 OMERS Pension handbook and the OMERS on-line administrator's manual, his 227 months of service with the ♦ Pension Plan were properly credited to his Plan record as eligible service upon his 2001 re-enrolment in the Plan.
2. **If an error was made, the Appellant relied upon it** – The Appellant argues in the alternative that, if an error was made, he relied on that error to his detriment in carrying out his retirement planning. The Appellant does not provide any particulars of any prejudice that he has suffered.

OMERS AC's Submissions

In submissions dated May 21, 2009 and responding submissions dated June 23, 2009, OMERS AC asks that the Appellant's appeal be dismissed for the following reasons:

1. **An error was made.** OMERS AC argues that the additional 227 months of service that were credited to the Appellant's Plan record as eligible service upon his 2001 re-

enrolment in the Plan were credited to the Appellant in error. OMERS AC notes that this service does not qualify as eligible service either: a) under the Plan's definition of "eligible service" and b) under subparagraph 8503(3)(c)(iii) of the ITAR. In regards to compliance with the ITAR, OMERS AC submits that it has obtained verbal confirmation from the Registered Plans Division of the Canada Revenue Agency that the additional 227 months of service that the Appellant transferred into the Plan from the ♦ Pension Plan and subsequently transferred out in 1998, cannot count as "early retirement eligibility service" under subparagraph 8503(3)(c)(iii) of the ITAR because it is neither credited service nor eligible service.

2. **Correcting the error was not a matter of discretion but a matter of legal compliance.** OMERS AC argues that it has no discretion in this matter. OMERS AC submits that the Plan must be administered in compliance with the Plan provisions and the applicable legislation. Accordingly, OMERS AC submits that all errors must be corrected upon discovery and members cannot be given service or benefits in excess of what they are legitimately entitled to under the Plan provisions and the applicable legislation.

After reviewing and considering all of the submissions of the parties, including reviewing the excerpts of OMERS documentation provided by the Appellant, the Committee dismisses the Appellant's appeal for the following reasons:

- In accordance with the Plan provisions and applicable provisions of the ITAR, only previous employment with an employer participating in the Plan is eligible to be considered "eligible service".
- Both excerpts of OMERS documentation provided by the Appellant refer to the fact that "eligible service" under the Plan must be with an employer participating in the Plan:
 - The excerpt of page 18 the May 2001 member handbook provided by the Appellant states in part:

Qualifying service is the sum of your OMERS credited service plus any other service with an employer participating in OMERS that is not credited service. (emphasis added)

- The excerpt of section 15.3.2 of the online OMERS Administration Manual provided by the Appellant states in part:

Eligible service is service with an employer that participates in OMERS that is not credited service in the OMERS plan. (emphasis added)

- In any event, the Plan provisions and the applicable provisions of the ITAR govern the operation of the Plan.
- The ♦ Pension Plan is not an employer participating in the Plan. Therefore, the Appellant's 227 months of service with the ♦ Pension Plan that were transferred into the Plan in 1995 and out of the Plan in 1998, are not "eligible service" under the Plan.
- Therefore, the Committee finds that OMERS AC was correct in removing the additional 227 months of eligible service from the Appellant's Plan record as a matter of legal compliance. Accordingly, the Appellant's appeal is dismissed.

Dated this _____

By Order of the Appeals Sub-Committee

John Goodwin
Chair

Eugene Swimmer
Vice Chair

Richard Faber