

**Severance Payments**

Cap. 355A.

**SEVERANCE PAYMENTS (TRIBUNAL)  
REGULATIONS, 1974**

S.I. 1974/42.

Made by the Minister under section 44 of the Severance Payments Act.

Cap. 355A.

1. These regulations may be cited as the Severance Payments (Tribunal) Regulations, 1974.

2. For the purposes of these regulations—

“applicant” means a person (including the Board) who under rule 1 of the Rules of Procedure contained in the Schedule has sent an originating application to the secretary for a decision of the Tribunal; Interpretation.

“Board” means the National Insurance Board established by section 3 of the National Insurance and Social Security Act; Cap. 47.

“office of the Tribunal” means the National Insurance Office;

“rebate” means a payment to which section 29 of the Act refers;

“Register” means the Register of Applications and Decisions kept in accordance with these regulations;

“respondent” means a party to the proceedings before the Tribunal other than the applicant;

“secretary” means the person assigned by the Minister in accordance with the Sixth Schedule to the Act to perform the functions of secretary to the Tribunal; 1975/111.

“Tribunal” means a tribunal appointed and constituted in accordance with the Sixth Schedule to the Act.

3. (1) The Rules of Procedure contained in the Schedule to these regulations shall have effect in relation to proceedings to which this regulation applies. Rules of Procedure.

(2) This regulation applies to proceedings in pursuance of references or appeals under Parts II, IV, V and VI of the Act—

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- (a) as to the right of an employee to a severance payment, to a payment under an agreement, or as to the amount of any such payment;
- (b) as to the liability of any person to make an employer's payment, that is to say, a payment falling within section 29 (1) of the Act;
- (c) as to the amount of the rebate payable in accordance with the Third Schedule to the Act;
- (d) as to the amount of the sum payable in accordance with the Fourth Schedule to the Act;
- (e) against the Board's withholding or reducing the amount of a rebate, being proceedings—
  - (i) the respondent or one of the respondents to which is a person other than the Board who resides or carries on business, or
  - (ii) in which, had the remedy been by way of an action in the High Court, the cause of action would have arisen wholly or in part in Barbados.

Proof of decision of the Tribunal.

**4.** The production in any proceedings in any court of a document purporting to be certified by the secretary to be a true copy of an entry of a decision in the Register shall be *prima facie* evidence of the document and of the contents thereof.

Breach of requirement for purposes of rule 3.

**5.** Any person who without reasonable excuse fails to comply with any requirement for the purposes of rule 3 as set out in the Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding \$500 and in the case of a continuing offence to a further fine not exceeding \$500 for each day or part thereof during which the offence continues after a conviction is first obtained.

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SCHEDULE

(Regulation 3)

RULES OF PROCEDURE

Originating application.

1. (1) Proceedings for the determination by the Tribunal of any question or appeal shall be instituted by the applicant sending to the secretary an

originating application which shall be in the Form 1, 2 or 3, as the case may be, set out in the Appendix, and shall set out the grounds of the application.

(2) Where the secretary is of the opinion that the originating application does not seek, or on the facts stated therein cannot entitle the applicant to a remedy which the Tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and inviting the applicant to state in writing whether he agrees to withdraw his application or wishes to proceed with it.

(3) An application in respect of which a notice has been given under paragraph (2) shall not be treated as having been received for the purposes of rule 2 unless the applicant intimates in writing to the secretary that he wishes to proceed with it; and upon receipt of such an intimation the secretary shall proceed in accordance with that rule.

(4) The withdrawal of an application under this rule shall be without prejudice to any right of the applicant to make further application to the Tribunal.

2. Upon receiving an originating application, the secretary shall enter particulars of it in the Register, and shall immediately send a copy of it to the respondent and to the Board, if it is not a party, and inform the applicant, the respondent and the Board, if it is not a party, in writing of the case number of the originating application entered in the Register, which shall thereafter constitute the title of the proceedings, and of the address to which notices and other communications to the secretary shall be sent. The copy of the originating application sent by the secretary to a respondent shall be accompanied by a notice in the Form 4 set out in the Appendix.

Registering  
of originating  
application.

3. (1) A respondent shall within 14 days of receiving a copy of the originating application enter an appearance to the proceedings by sending to the secretary a notice of appearance which shall be in the Form 5 set out in the Appendix stating whether he intends to resist the application, and, if so, on what grounds. Upon receipt of a notice of appearance the secretary shall immediately send a copy of it to the other party and to the Board, if it is not a party.

Appearance  
by  
respondent.

(2) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

- (a) to apply under rule 12 (1) for an extension of the time appointed by this rule for entering an appearance; and
- (b) to be sent a copy of a decision or specification of reasons or corrected decision or specification under rule 9 (3) or 9 (7),

and accordingly without prejudice to the generality of this provision, he shall not be entitled—

- (i) to make an application under rule 4;
- (ii) to notice of the date, time and place of the hearing under rule 5;

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- (iii) to submit representations in writing for consideration by the Tribunal under rule 6 (2);
- (iv) to be heard or represented at the hearing under rule 7 or 8;
- (v) to enter into a written agreement under rule 11 (1) (d); or
- (vi) to apply for directions under rule 12 (2) or to receive a notice under rule 12 (4).

(3) A notice of appearance which is sent to the secretary after the time appointed by this rule for entering an appearance shall be deemed to include an application under rule 12 (1) by the respondent who has sent the notice of appearance for an extension of the time so appointed. Without prejudice to rule 12 (4), if the Tribunal grants the application (which it may do notwithstanding that the grounds of the application are not stated) the secretary shall immediately send a copy of the notice of appearance to the other party and to the Board, if it is not a party. The Tribunal shall not refuse an extension of time under this rule unless it has given the person desiring to enter an appearance an opportunity to show cause why the extension should be granted.

Power to require further particulars and attendance of witnesses and to grant discovery.

4. (1) Subject to rule 3 (2), the Tribunal may on the application of a party to the proceedings or of the Board, if it is not a party, made either by notice to the secretary or at the hearing of the originating application—

- (a) require a party to furnish in writing to another party and to the Board, if it is not a party, further particulars of the grounds on which he relies and of any facts and contentions relevant thereto;
- (b) grant to a party or to the Board, if it is not a party, such discovery or inspection of documents as may be granted by the High Court; and
- (c) require the attendance of any person, including a party to the proceedings, as a witness, or require the production of any document relating to the question or appeal to be determined; and may appoint the time at or within which or the place at which any act required under this rule is to be done.

(2) A party on whom a requirement has been made under paragraph (1) (b) of this rule on an *ex parte* application and a person on whom a requirement has been made under paragraph (1) (c) thereof may apply to the Tribunal to vary or set aside the requirement.

(3) No such application to vary or set aside shall be entertained, in a case where a time has been appointed under paragraph (1) in relation to the requirement, unless it is made before the time, or, as the case may be, expiration of the time so appointed. Notice of the application in accordance with rule 11 (2) shall be given to the party on whose application the requirement was made, and, if it was not that party, to the Board.

(4) Every document containing a requirement under paragraph (1) (b) or (c) shall contain a reference to the fact that under regulation 5 any person who without reasonable excuse fails to comply with any such requirement is

liable on summary conviction to a fine not exceeding \$500, and in the case of a continuing offence to a further fine not exceeding \$500 for each day or part thereof during which the offence continues after a conviction is first obtained.

5. The Chairman of the Tribunal shall fix the date, time and place of the hearing of the originating application, and the secretary shall, not less than 14 days before the date so fixed, subject to rule 3 (2), send to each party and to the Board, if it is not a party, a notice in the Form 6 set out in the Appendix. Time and place of hearing.

6. (1) Any hearing of or in connection with an originating application may take place in public, unless the Tribunal determines at the request of a party to hear the application in private, but a member of the Tribunal shall be entitled to attend the hearing in his capacity as such member. The hearing.

(2) Subject to rule 3 (2), if a party wishes to submit representations in writing for consideration by the Tribunal at the hearing of the originating application, that party shall send such representations to the secretary not less than 7 days before the hearing and shall at the same time send a copy thereof to the other party and to the Board, if it is not a party.

7. (1) Subject to rule 3 (2), at any hearing of or in connection with an originating application a party may appear and may be heard in person or be represented by an attorney-at-law or by a representative of a trade union or of an employer's association, or, with the leave of the Tribunal, by any other person. Representation.

(2) The Board, if it so elects, is entitled to appear and be heard at any hearing of or in connection with an originating application, notwithstanding that it is not a party, and may be represented by an officer from the National Insurance Office or by an attorney-at-law.

8. (1) Subject to rule 3 (2), at the hearing of the originating application the parties and the Board, if it is not a party and it elects to appear, shall be entitled to make opening statements, to call witnesses, to cross-examine any witnesses called by any other party or by the Board, if it is not a party, and to address the Tribunal. Procedure at hearing.

(2) Subject to rule 3 (2), a party may, if he so desires, give evidence on his own behalf.

(3) Without prejudice to the right of the Board to appear and be heard, and subject to paragraph (4), if a party fails to appear or to be represented at the time and place fixed for the hearing, the Tribunal may dispose of the application in the absence of that party or may adjourn the hearing to a later date.

(4) Notwithstanding paragraph (3), before disposing of an application under that paragraph the Tribunal shall consider any representation submitted by that party under rule 6 (2).

(5) The Tribunal may require any witnesses to give evidence on oath.

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Decision of  
the Tribunal.

9. (1) A decision of the Tribunal may be taken by a majority thereof, and, if the Tribunal is constituted of an equal number of persons, the chairman shall have a second or casting vote.

(2) The decision of the Tribunal shall be recorded in a document signed by the chairman which shall contain the reasons for the decision.

(3) Subject to paragraph (4), the document signed by the chairman shall on receipt by the secretary be entered in the Register, and the secretary shall send a copy of the entry to each of the parties and to the Board, if it is not a party.

(4) The specification of the reasons for the decision shall be omitted from the Register in any case in which the Tribunal, on the application of any of the parties, so directs, on the ground that disclosure would be contrary to the interests of that party, and in that event a specification of the reasons shall be sent to the parties and to the Board, if it is not a party, together with the copy of the entry.

(5) The Register shall be kept at the office of the Tribunal and shall be open to inspection at any reasonable hour by any person without payment of a fee.

(6) The chairman of the Tribunal may by certificate under his hand correct in documents recording the Tribunal's decisions clerical mistakes or errors arising therein from any accidental slip or omission.

(7) On receipt of the certificate of the chairman, the secretary shall thereupon make such correction as may be necessary in the Register and shall send a copy of the corrected entry or of the corrected specification of the reasons, as the case may be, to the parties and to the Board, if it is not a party.

Costs.

10. (1) The Tribunal shall not normally award costs, but where in its opinion a party to the proceedings, and if he is a respondent, whether or not he has entered an appearance, has acted frivolously or vexatiously, the Tribunal may include in its decision—

(a) an order that that party shall pay to another party or to the Board, if it is not a party, either a specified sum in respect of the costs incurred by that other party or, as the case may be, by the Board, or, in default of agreement, the taxed amount of those costs;

(b) an order that that party shall pay to the Board a specified sum in respect of the whole or any part of any allowances other than allowances paid to members of the Tribunal, to any person for the purposes of, or in connection with, his attendance at the Tribunal.

(2) Notwithstanding paragraph (1), where on the application of a party to the proceedings the Tribunal has adjourned the hearing, the Tribunal may include in its decision an order against that party under sub-paragraph (a) or (b) of paragraph 10 (1) in respect of any costs incurred or any allowances paid as a result of the adjournment.

(3) Any costs required by an order under this rule to be taxed may be

taxed in the High Court according to such of the scales prescribed by the Rules of the Supreme Court, 1958, as shall be directed by that order.

11. (1) The Tribunal may, if it thinks fit—

- (a) extend the time appointed by these rules for doing any act notwithstanding (subject to rule 4 (3)) that the time appointed may have expired;
- (b) adjourn the day or time fixed for the hearing;
- (c) if the applicant at any time gives notice of the abandonment of his originating application, dismiss the proceedings;
- (d) if both or all the parties and the Board, if it is not a party, agree in writing upon the terms of a decision to be made by the Tribunal, decide accordingly.

Miscellaneous powers of the Tribunal.

(2) Subject to these rules, the Tribunal may regulate its own proceedings and may, if it thinks fit, before granting an application under rule 4 or rule 12, require the party making the application to give notice of it to the other party and to the Board, if it is not a party, or, if the application is made by the Board, require the Board to give notice of it to the parties. The notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purposes of the application by the Tribunal.

(3) Any act other than the hearing of an originating application required or authorised by these rules to be done by the Tribunal may be done by, or on the directions of, the chairman of the Tribunal.

(4) Rule 10 shall apply to an order dismissing proceedings under paragraph (1) (c).

12. (1) An application to the Tribunal for an extension of the time appointed by these rules for doing any act may be made by a party either before, or, subject to rule 4 (3), after the expiration of any time so appointed. Applications.

(2) Subject to rule 3 (2), a party or the Board, if it is not a party, may at any time apply to the Tribunal for directions on any matter arising in connection with the proceedings.

(3) An application under paragraphs (1) and (2) shall be made by sending to the secretary a notice of application, which shall state the title of the proceedings and shall set out the grounds of the application.

(4) Subject to rule 3 (2), the secretary shall give notice to both or all the parties and to the Board, if it is not a party, of any extension of time granted or any directions given under this rule.

13. (1) Any notice given under these rules shall be in writing and all notices and documents required or authorised by these rules to be sent or given to any person may be sent by post or delivered to or at— Notices, etc.

- (a) in the case of a document directed to the secretary, National Insurance

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Office or such other office as may be notified by the secretary to the parties and to the Board, if it is not a party, under rule 2;

- (b) in the case of a document directed to the Board in proceedings to which it is not a party, the National Insurance Office;
- (c) in the case of a document directed to a party, his address for service as specified in the originating application or in a notice under paragraph (2), or, if no address for service is so specified, his last known address or place of business in Barbados, or, if the party is a corporation, the corporation's registered or principal office,

and if sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(2) A party may at any time by notice to the secretary and to the other party and to the Board, if it is not a party, change his address for service under these rules.

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SEVERANCE PAYMENTS (STATUTORY FORMS)

APPENDIX

FORM 1

(Rule 1)

Originating Application by an employee for question to be decided under the Severance Payments Act.

IMPORTANT NOTICE TO INTENDING APPLICANTS

This application form may only be used for questions relating to severance payments.

The Tribunal cannot make you an award if you had less than 104 weeks' continuous employment with your employer (including, in some cases, employment with a predecessor of your employer or with an associated company) since you attained the age of 16 or if you attained the age of 65 before the employment ended.

The rules for calculating continuous employment are explained in Appendix B to the Guide to the Severance Payments Scheme. Employment may be continuous despite short periods of absence. In the event of any question arising it will be for the Tribunal to decide whether employment is continuous.

If your employer does not contest your right to a severance payment but says he cannot pay, you should make enquiries at the National Insurance Office before you complete this application.

To:

The Secretary to the Tribunal,  
Severance Payments Questions,  
National Insurance Office.  
.....  
.....

1. I hereby apply for a decision of the Tribunal

- \*as to whether I have a right to a severance payment,
- \*as to the amount of the severance payment to which I am entitled, and my reasons for this application are given at item 9 below.

[Note to Applicants: Delete either of the items marked thus\* if it is not applicable to your case. If you do not delete the second item (relating to the amount of the payment) you should also complete item 10 of this form and, where appropriate, item 11.]

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2. My name (surname first), address and telephone number are:  
.....  
.....  
.....

[if a woman, state whether Mrs. or Miss]

3. All communications with regard to this originating application should be addressed

A. to me at †.....

B. to my attorney(s)-at-law/agent(s), Mr./Messrs.....  
..... at.....  
.....

[Note to Applicants: You should complete either A or B above and delete where inapplicable. When the originating application is heard by the Tribunal you may appear and be heard in person or be represented by an attorney-at-law or by a representative of a trade union or with the leave of the Tribunal by any other person.]

4. The name, address and telephone number of the employer (and of other person(s)) against whom a decision of the Tribunal is sought are:

.....  
.....  
.....

5. My occupation whilst employed was that of.....

6. My employment began..... [date] and ended..... [date]

7. My basic normal weekly hours of work were.....

8. My date of birth is .....

9. The grounds of my application are as follows:

.....  
.....  
(Continue on a separate sheet if necessary)

[Note to Applicants: Give above full details of the grounds of your application. Say how your employment ended, and give any other information which you would like the Tribunal to take into consideration. If you refused an offer of alternative employment, give your reasons. If there were breaks in the continuity of the employment, give the reasons for them.]

10. The full details of my salary or wages and overtime rates were as follows:

.....  
.....  
(Continue on a separate sheet if necessary)

[Note to Applicants: This item should only be completed if a decision is

†Insert address as applicable.

required as to the amount of the severance payment. If this item is applicable, give full details of your salary or wages, and, where applicable, overtime rate. If you were a pieceworker or a shift-worker state what you consider to be a week's pay for the purpose of calculating a severance payment and explain in detail how you arrive at this figure.]

- 11. The amount of severance payment made/offered to me already in respect of this redundancy was.....  
 [Note to Applicants: If you complete this item (which you should do if it is applicable to your case) you should delete either the word "made" or the word "offered".]

Date..... Signature.....  
*Applicant*

FORM 2

(Rule 1)

Originating Application by an Employer for a decision that he is entitled to a rebate from the Severance Fund.

IMPORTANT NOTICE TO INTENDING APPLICANTS

This application form may only be used by employers for questions relating to rebates from the Severance Fund.

To:  
The Secretary to the Tribunal  
Severance Payments Questions,  
National Insurance Office.  
.....  
.....

- 1. I/We\* hereby apply for a decision of the Tribunal that I/We\* am/are\* entitled to a rebate from the Severance Fund amounting to \$..... and my/our\* reasons for this application are given at item 6 below.
- 2. My/our\* name, address and telephone number are:  
.....  
.....  
.....

\* Delete if inapplicable.

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- 3. I/We\* am/are\* in business as.....
- 4. All communications with regard to this originating application should be addressed
  - A. to me/us\* at †.....
  - B. to my/our\* attorney(s)-at-law/agent(s)\*, Mr./Messrs.\*  
..... at†.....

[Note to Applicants: You should complete either A or B above and delete where inapplicable. When the originating application is heard by the Tribunal you may appear and be heard in person or be represented by an attorney-at-law or by a representative of an employers' association, or, with the leave of the Tribunal, by any other person.]

- 5. This decision is sought against the Minister of Labour.
- 6. The grounds of this application are as follows:  
.....  
.....

(Continue on a separate sheet if necessary)

[Note to Applicants: Include above all information which you think the Tribunal ought to consider.]

Date..... Signature.....  
Applicant(s)

FORM 3

(Rule 1)

Cap. 355A. Originating Application for the Determination of a Question or Appeal under the Severance Payments Act.

**IMPORTANT NOTICE TO INTENDING APPLICANTS**

This form must only be used in cases where either Form 1 or Form 2 is not applicable. If you are an employee and wish the Tribunal to determine a question relating to severance payments, ask for Form 1. If you are an employer and wish the Tribunal to determine a question relating to rebates from the Severance Fund, ask for Form 2.

\*Delete if inapplicable.  
†Insert address as applicable.

To:

The Secretary to the Tribunal

Severance Payments Questions,  
National Insurance Office.

.....  
.....

1. I/We\*.....  
    [if a woman state whether Mrs. or Miss]

of..... (address)  
(telephone number)..... (occupation or business).....  
hereby apply under the Severance Payments (Tribunal) Regulations,  
1974 (for the reasons given at item 4 below) for a decision of the Tribunal  
to the following effect:

.....  
.....

2. All communications with regard to this originating application should  
be addressed

A. to me/us\* at† .....

B. to my/our\* attorney(s)-at-law/agent(s), Mr./Messrs.\*.....  
..... at†.....

[Note to Applicants: You should complete either A or B above and delete  
where inapplicable. When the originating application is heard by the  
Tribunal you may appear and be heard in person or be represented by  
an attorney-at-law or by a representative of a trade union or of an  
employers' association or with the leave of the Tribunal by any other  
person.]

3. The name(s), address(es) and telephone number(s) of the person(s)  
against whom this decision is sought are:

.....  
.....  
.....

4. The grounds of this application are as follows:

.....  
.....

(Continue on a separate sheet if necessary)

[Note to Applicants: Include above all information which you think the  
Tribunal ought to consider.]

Date..... Signature.....

Applicant(s)

\*Delete if inapplicable.

†Insert address as applicable.

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FORM 4

(Rule 2)

Notice of Originating Application

National Insurance Office

.....  
.....

Case No.

I send you herewith a copy of an originating application to which a decision of the Tribunal is sought against you.

The proceedings on this originating application will be regulated by the rules of procedure contained in the Severance Payments (Tribunal) Regulations, 1974. The case number of this originating application which is indicated above should be quoted in any communication to me with regard to these proceedings.

Under the rules you are required to enter an appearance within 14 days of receiving the copy of the originating application. You can do this by filling in and sending to me the enclosed form of notice of appearance.

The notice of appearance when completed (and any other notices or communications addressed to me) should be sent by post or delivered to me [at the address mentioned at the head of this notice]

[at the National Insurance Office.....]  
stating the case number of the proceedings.

If you do not enter an appearance you will not be entitled to take any part in the proceedings (except to apply for an extension of the time appointed by the rules for entering an appearance) or to receive any further notice of the proceedings and a decision which is enforceable in the High Court may be given against you in your absence. Whether or not you enter an appearance you will be sent a copy of the Tribunal's decision.

When the originating application is heard by the Tribunal the parties (other than a respondent who has not entered an appearance) may appear and be heard in person or be represented by an attorney-at-law or by a representative of a trade union or of an employers' association or with the leave of the Tribunal by any other person.

Dated..... 19....

Signed.....

Secretary

To the Respondent(s).....

FORM 5

(Rule 3)

Notice of Appearance by Respondent

Case No.....

To:

The Secretary to the Tribunal  
Severance Payments Questions,  
National Insurance Office.

.....  
.....

I/We\* ..... of .....  
hereby give notice that I/We\* intend to resist the originating ap-  
\*do not intend to resist  
plication made by.....

\*The grounds on which I/We\* intend to resist the said originating  
application are as follows:

.....  
.....

(Continue on a separate sheet if necessary)

[Note to Respondents: When completing this part of the form you should  
indicate whether you dispute the accuracy of any of the statements made  
in the originating application and if so in what respects.]

All communications with regard to the above-mentioned originating  
application should be addressed to me/us\* at† .....

.....  
to my/our\* attorney(s)/agent(s),\* Mr./Messrs.\* .....

.....

Dated ..... 19....

Signed .....

Respondent(s)

\* Delete if inapplicable.

† Insert address as applicable.

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FORM 6

(Rule 5)

Notice of Hearing

National Insurance Office

.....  
.....

Case No. ....

NOTICE IS HEREBY GIVEN that the originating application of ..... dated ..... will be heard by the Tribunal at ..... on the ..... day of ..... 19.... at ..... o'clock in the ..... noon or as soon as may be thereafter.

In his own interest each party should appear at the hearing with his witnesses (if any) at the above time and place, and bring with him all documents on which he intends to rely.

Each party (other than a respondent who has not entered an appearance) is entitled to be represented by an attorney-at-law or by a representative of a trade union or of an employers' association, or, with the leave of the Tribunal, by any other person.

If for any reason a party does not propose, or is unable to appear at the hearing either in person or by representative, that party should immediately inform me in writing at the address mentioned at the head of this notice, stating the case number of the proceedings and the reasons for the proposal not to, or the inability to, attend or be represented.

The Rules provide that if a party (other than a respondent who has not entered an appearance) shall desire to submit representations in writing for consideration by the Tribunal at the hearing, that party shall send such representations to the Secretary of the Tribunal not less than 7 days before the hearing and shall at the same time send a copy thereof to the other party or parties and to the National Insurance Board if it is not a party. Any such written representations addressed to me should be sent or delivered to or at the address mentioned at the head of this notice.

Dated .....19....

Signed .....