

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/386/03/NJ

In the complaint between:

A February

Complainant

and

Peninsula Beverage Pension Fund

First Respondent

Peninsula Beverage Provident Fund

Second Respondent

Peninsula Beverage Co (Pty) Ltd

Third Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS
ACT OF 1956**

[1] This complaint relates to the payment of an early withdrawal benefit and whether that benefit has been correctly computed in terms of the rules of the first and second respondents.

[2] In determining this matter, I have relied exclusively on the documentary evidence and written submissions gathered during the course of our investigation.

The parties

[3] The complainant is Allan February, an adult male currently residing in Delft, Western Cape. He is unrepresented in these proceedings.

[4] The first respondent is Peninsula Beverage Pension Fund, a pension fund falling within the definition of pension fund organisation contained in section 1 of the Act (“**the fund**”). The fund was initially a defined benefit scheme and with effect from 1 August 1997 converted to a defined contribution arrangement.

[5] The second respondent is Peninsula Beverage Provident Fund, also a pension fund falling within the definition of pension fund organisation in section 1 of the Act (“**the provident fund**”). The provident fund is a defined contribution scheme. Both respondent funds are administered by Alexander Forbes Financial Services. The third respondent is Peninsular Beverage Co (Pty) Ltd, a participating employer in both funds (“**the employer**”). The respondents are represented by Ms Renton of the administrator.

The facts

[6] In 1982, the complainant commenced employment with the employer as a truck helper and subsequently was promoted to a machine operator. On a date not apparent from the papers, he became a member of the pension fund. In terms of rule 3.1.2(i), he was required to contribute at a rate of 7.5% of his annual salary and the employer was required to make periodical contributions which together with the members’ contributions were sufficient to provide for the benefits provided in the rules of the fund (rule 3.2.1).

[7] In about 1997, the fund undertook a major restructuring exercise in terms of which it was converted to a defined contribution arrangement and all members were given the option of transferring to the provident fund. The complainant elected to transfer to the said provident fund and R50,138.14

representing his actuarial reserve value was transferred to the provident fund.

[8] In terms of rule 4.1.1 of the provident fund, the complainant was required to contribute at the rate of 7.5% of his fund salary and the employer's contributions were regulated by rule 4.2, the material provisions of which read:

“4.2 Contributions by the Employer

4.2.1 The Employer shall make contributions towards the retirement benefit of each Member in its Service at the rate of one-twelfth of 5.6 per cent of the Member's Fund Salary.

4.2.2 In addition to the amount paid in terms of Rule 4.2.1, the Employer shall make contributions at the rate of one-twelfth of 4.4 per cent of the Member's fund Salary, less the cost of the Disability Arrangement and the funeral scheme for the month concerned, which shall be applied to meet the cost for the month concerned of the death benefits referred to in Rule 6.1.1(a) and Rule 6.1.1(i) and (ii)”

[9] In 2002 the complainant voluntarily resigned from service and became entitled to a withdrawal benefit in terms of rule 7.1 of the provident fund, which reads:

“If a Member who is not qualified to retire in terms of Rule 5 leaves Service of his own free will or is dismissed by his Employer for reasons other than those provided for in Rule 7.2, he shall become entitled to a lump sum benefit equal to:

- (a) his Member's Portion at the date of leaving Service; plus
- (b) the following percentage of the Employer's Portion at the date of leaving Service:

Years of Continuous Service	Percentage
Less than 1	0

1 but less than 2	10
2 but less than 3	20
3 but less than 4	30
4 but less than 5	40
5 but less than 6	50
6 but less than 7	60
7 but less than 8	70
8 but less than 9	80
9 but less than 10	90
10 or more	100

For the purposes of this above table “Years of Continuous Service” shall mean uninterrupted Service with the Employer and no interpolation shall be used.”

[10] The provident fund computed the resignation benefit as follows:

“Member’s Pension Transfer amount	R 6 997.33
Interest on the Member Pension Transfer amount	R 4 521.19
Portion of company’s Pension transfer amount	R38 619.57
Interest on Pension Fund Value from 1997-2002	R24 953.16
Member’s contribution to the Fund	R10 116.44
Interest on the member’s contributions	R 2 854.54
Plus 100% of company contributions with interest	R 9 684.87
Late interest adjustment	<u>R 1 078.65</u>
Gross benefit	R98 825.80
Less tax	R18 134.01
Less indebtedness (ie Homeloan)	<u>R 9 492.23</u>
Amount of payment	R71.199.56”

The “late interest adjustment” relates to the growth of the complainant’s benefit from the date of his resignation (and exit from the provident fund) to date of actual payment of his benefit.

Complainant's case

[11] The complainant is dissatisfied with the value of his lump sum benefit and believes that his benefit ought to have been in the region of R160 000. This belief is based on the fact that he had over 20 years of service with a contribution rate of 7.5% and the employer contributing at a rate of 10% of his fund salary. He requested that an independent actuary do an assessment of his fund credit and he be compensated for all monies due to him.

Respondents' case

[12] Ms Renton on behalf of the respondents submits that the complainant received several housing loans from the provident fund and as at the date of resignation an outstanding balance of R9 492.23 was owing to the provident fund in this regard. Furthermore, in her view, the transfer value was correctly computed in terms of the relevant transfer rule and the resignation benefit was correctly computed in terms of the resignation rule of the provident fund. Accordingly, she requests that the complaint be dismissed.

Merits

[13] In terms of section 13 of the Act, the rules of a fund are binding on the fund and its members. In terms of the rules of the pension fund, as stated, the complainant was required to contribute at a rate of 7.5% of his fund salary. The employer was required to contribute at a rate which would provide for the cost of the benefits provided in the rules of the fund as determined by the actuary of the fund. Thus, the employer did not contribute at any rate specified in the rules of the fund, but rather at a fluctuating rate determined by the actuary to provide for the balance of

the costs of the scheme. As is the nature of a defined benefit arrangement scheme, the contributions are not related to the provision of benefits and thus even if the employer had contributed at a higher rate, this would not necessarily have led to the complainant receiving a greater transfer value. Furthermore, a member's actuarial reserve value is calculated independently of the contribution rates.

[14] Turning to the contribution rates as specified in the rules of the provident fund, once again, the complainant was required to contribute at a rate of 7.5%. The employer in this instance contributed at a rate of 5.6% of each member's fund salary. Furthermore, the employer was required to contribute a further 4.4% less the costs of disability arrangements and the funeral scheme to provide for certain risk benefits (rule 4.2.2). Thus, the employer for the purposes of the retirement benefit of the complainant only contributed at a rate of 5.6% and not 10% as alleged by the complainant.

[15] Regarding the calculation of the withdrawal benefit by the provident fund, I am satisfied that the benefit was correctly computed with reference to the rules of the fund and there is no basis in law to set aside the deductions for tax and housing loans. The complainant's final pre-tax withdrawal benefit of R98,825.80 (as at 7 June 2002) is in line with the benefit statement he received from the fund dated 28 February 2002 in terms of which his resignation benefit was estimated to be R92,366.57.

[16] In the result, the complaint must fail.

DATED at Cape Town this 17th day of May 2004.

Vuyani Ngalwana

Pension Funds Adjudicator