



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our ref: PFA/GA/5703/05/JM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): B WEBBER v WILLOW RIDGE PRIMARY SCHOOL (“the employer”) HOLLARD UMBRELLA PROVIDENT FUND (“the fund”)

Introduction

- [1] Having considered the complaint received by this office on 4 October 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reason therefor appear below.

Facts

- [2] You were employed at Willow Ridge Primary School from January 1999 until 5 June 2002 as a teacher and by virtue thereof became a member of a fund from 1 March 2000 until 30 April 2002.
- [3] You commenced making enquiries regarding your withdrawal benefit around 2005 and sent a letter dated 5 September 2005 to your erstwhile employer requesting the necessary documentation to be signed and submitted to the administrator without any success.

Complaint

- [4] As you have not received any communication from the employer to date, you have now approached this tribunal requesting an investigation regarding why you have not received your benefit.

Response

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mballo (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), Solomzi Gcelu (Assistant Adjudicator)

Office Manager: L Manuel

- [5] The employer has failed to file a response despite numerous requests from members of this office to Mr Aston (the deputy principal) of the employer to do so.
- [6] Tshepo Taukobong, on behalf of the administrators of the fund has filed a response wherein it is submitted that they have not received a signed notification of withdrawal from employer instructing payment of benefit. Ms John of the administrator confirmed to my assistant on 28 February 2006 during their telephonic conversation that they only became aware of the complainant's withdrawal when they received a copy of your complaint to this office.
- [7] It is confirmed that the benefit is in the fund and that they await the signed notification of withdrawal.

Determination and reasons therefor

- [8] The participating employer in a pension fund owes various duties to the members of the fund. In this regard, Marais J in *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (PFA) at 235B-D, commented as follows:

“The trustees of the fund owe a fiduciary duty to the fund and to its members and other beneficiaries (section 2(a) and (b) of the Financial Institutions (Investment of Funds) Act 39 of 1984 and rule 18.1.4). The employer is not similarly burdened but owes at least a duty of good faith to the fund and its members and beneficiaries (cf *Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 2 All ER 597 (Ch) at 604g-606j).”

- [9] Section 37D makes provision for exceptional instances when deductions can be effected from pension benefits. Where a member's dishonest conduct causes loss to the employer, in terms of section 37D(1)(b), before a member's benefit may be deducted or withheld, the following requirements must be met:
- [9.1] There must be an amount due by a member to the employer on the date of exit;
- [9.2] The amount must be in respect of compensation in respect of any damage caused to the employer;
- [9.3] The damage must be as a result of theft, dishonesty, fraud or similar misconduct by the member;
- [9.4] The member must either admit liability in writing to the employer or judgment must be obtained in any court, and
- [9.5] The judgment or written admission of liability must be in respect of the compensation due in respect of the damage caused.

- [10] It is not entirely clear why the employer has not completed the withdrawal notification form. The conduct of the employer in this matter is to be deprecated. The administrator has acknowledged that your “share in the fund” is in the fund portfolio and the only outstanding instruction is the completed and signed withdrawal notification form. It is evident that the delay emanates from the employer. The employer, notwithstanding provisions of the Act that it may not withhold a member’s benefit in terms of section 37D unless certain requirements have been met, has abused its powers by refusing to complete the withdrawal notification form without any good reason in law. Had the complainant been represented in this matter, contrary to the normal position of this tribunal, I would have no hesitation in making a cost order in favour of the complainant.
- [11] Finally, the conduct of the fund and in particular, the board of management is also not up to standard. In terms of section 7C(2)(a), the board must take all reasonable steps to ensure that the interests of members are protected at all times and it must act with due care and diligence (section 7C(2)(b)). Furthermore, the board must ensure that proper control systems are in place (section 7D(b)). It is wholly unacceptable that a member who left the fund in April 2002 has yet to receive her withdrawal benefit. Apart from the aforementioned duties imposed on the board, common sense dictates that as soon as the fund became aware of the withdrawal of the complainant (if no notification was received from employer or the member, the contribution schedules should have revealed that the member had left service or something was amiss) it should have requested a withdrawal notification form from the employer. When the employer failed to submit the form it should have put the employer to terms and if necessary instituted proceedings against the employer in this Tribunal requesting relief in the form of an interdict requiring the employer to complete the form. Instead, the fund has done nothing to the obvious financial detriment of the member.

Relief

- [12.1] The fund is hereby instructed to accept a withdrawal form completed and signed by the complainant only and to calculate the complainant’s withdrawal benefit in terms of the rules, within 7 days of the date of this ruling.
- [12.2] The fund is ordered to pay the benefit calculated in terms of paragraph [12.1] and inform the employer of this amount within 14 days of the date of this determination.
- [12.3] The employer is ordered to pay interest on the cash benefit in terms of paragraph [12.2] to the complainant at the rate of 15.5% per annum reckoned from 30 May 2002 to date of payment, within 4 weeks of the

date of this determination.

DATED at JOHANNESBURG on this day of 2006.

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR

cc: Willow Ridge Primary School: The Principal
PO Box 1534
Honeydew
2040

Fax: (011) 795 1908

Cc: Hollard: Ms J John – Legal & Compliance Officer
Hollard House
22 Oxford Street
Parktown
2000

Fax: (011) 713 8729

Registered Address: 19 Ameshof Street
8th Floor
Rennie House
Braamfontein
2001

S30M filing: Magistrate's Court