

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

CASE NO:PFA/WE/952/2003/TJ

In the complaint between:

**JS Van Rooyen**

**Complainant**

and

**ICS Provident Fund**

**First Respondent**

**NBC Fund Administrators**

**Second Respondent**

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

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- [1] This complaint relates to the payment of a death benefit. As I have considered it unnecessary to hold a hearing, in determining this matter I have relied on the documentary evidence and the parties' respective submissions.
- [2] The Complainant is Juneth Sonny Van Rooyen, an adult female residing in George. She is also the spouse of the late Clive Van Rooyen who, at the time of his death, was a member of the First Respondent.
- [3] The First Respondent is ICS Provident Fund ("the Fund"), a pension fund falling within the definition of a pension fund organisation contained in section 1 of the Act. The Second Respondent is NBC Fund Administrators ("the Administrator") which is responsible for the administration of the Fund. In this matter the Administrator has

filed a response to the complaint and                    has responded to the various queries from this office on its own behalf and on behalf of the Fund.

- [4] The deceased member commenced employment with Dairymaid Nestle (Pty) Ltd in August 1996 and remained employed with the company until his death in July 2000. Rule 6.1.1 of the Fund rules provides as follows:

“If a Member dies while in Service on or before the last day of the month in which he reaches age 70, the following lump sum benefit will be payable from the Fund:-

- (a) four times the annualized amount of his Earnings at the date of his death;
- plus
- (b) his Fund Credit at the date of his death.”

No dispute has been raised in relation to the payment of the Fund Credit.

- [5] At the time of his death, and as reflected on his payslip for July 2000, it appears that the deceased member was earning a monthly salary of R6 822,13. His annual salary would, therefore, be R81 865,56 and four times this annual salary results in a benefit of R327 462,24.
- [6] However, when the death benefit calculations were done by the Administrator, a monthly salary of R4 958,27 was used, this being the deceased member's salary in the month immediately preceding his death, i.e. June 2000. The annual salary was, therefore, calculated as being R59 499.20. (On my calculations this amount should be R59 499.24). Four times this annual salary should result in a benefit of R237 996,96.
- [7] By my calculations, there appears to be a difference of R89 465,28 between the death benefit calculated on the basis of the higher salary (July 2000) and that calculated on the basis of the lower salary (June 2000).

- [8] The rationale for the calculation of the death benefit on the basis of the lower salary appears as follows from a letter sent by the Administrator to the employer:

“Note: Please be advised that the June 2000 contribution was used as the last full month that the member worked was in June 2000.

Should there be an increase in July, we would require supporting documents because this is a common way of increasing benefits at death, which we wish to control.”

- [9] As stated above, Rule 6.1.1 makes clear that a death benefit is to be calculated on the basis of the annual salary as “at the date of his death”. There appears to be no express requirement in the rule on the basis of which the Fund and Administrator may decide to calculate the benefit on the basis of the last full month worked by the deceased member (i.e. June 2000) as opposed to the month in which he died (i.e. July 2000). There also appears to be no express requirement that written confirmation of a salary increase must be obtained from the employer before a benefit could be paid out on the basis of the higher salary.

- [10] In the course of the investigation the Administrator was requested to provide any documentary or other evidence that might indicate that written confirmation of the salary increase was required by the assurer or the Fund from the employer, and that the benefit calculations were to be done on the basis of the last full month worked by the deceased member. The response from the Administrator (which was also on behalf of the Fund) was as follows:

“We are informed that the member’s file is missing from archives, but our administrators are continuing with their search to try and locate it. We have also not been able to locate the policy document, but we can confirm that the payment of any (death) benefit promised in the registered rules of a fund is, in addition to the terms of any existing policy agreement, payable in terms of the applicable rule. In this case, the relevant rule is Rule 6.1.1.(a), which stipulates that the death benefit will be represented by four times the annualized amount of the member’s earnings at the date of his death.”

As per our investigations to date, it is not standard practice to require the employer to confirm a higher salary. It happened in this case due to the circumstances prevailing at the time of the member's death. For purposes of our enquiry into this case, all relevant members of staff who were involved at the time have left the employment of NBC. However, we have discussed this case with the present incumbents, after which we all concluded that the reasonable assumption that can be drawn out of this case is that on the death claim form, the salary that could have been indicated is the one before the member's death, ie before the increase. A discrepancy would have arisen when the death claim form was compared to the monthly schedule provided by the employer reflecting the contributions of the month for the members. In the case of the deceased member, the schedule reflected the higher contribution, especially for the month of July, when the member passed away.

We are informed that in reconciling the death claim form and the contributions schedule, the discrepancy would have been queried with the employer. This is the stage where confirmation from the employer of the higher salary was requested and never received."

- [11] In the course of our investigations we were able to obtain from the employer a copy of the Death Claim Form which was sent by the employer to the Administrator. Contrary to the explanation offered by the Administrator this form reflects the last salary earned by the deceased member as the higher salary and reflects the annualized salary as R81 865, 00, i.e. calculated on the basis of this higher salary.
- [12] The Administrator and the Fund has sought to justify its conduct on the basis of mere probabilities as to what might have happened. There appears, in my view, to be no basis for the explanation offered by the Administrator as to why a lesser benefit was paid. It is also my view that such conduct by the Fund and the Administrator amounts to maladministration and, with no apparent justification, has caused delay, inconvenience and unnecessary cost for the Complainant.
- [13] The order of this tribunal is that the First Respondent is directed to pay the Complainant the amount of R89 465,28 (less any relevant tax deductions) together with interest thereon at a rate prescribed in the Prescribed Rate of Interest Act from

3 October 2001 to the date of <sup>5</sup> payment, which should be no later than 9 August 2004.

DATED at CAPE TOWN this 22 day of JULY 2004.

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**VUYANI NGALWANA**

PENSION FUNDS ADJUDICATOR