



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 reference: PFA/WE/4795/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): X Pinzi v AZA Day and Night Security (Pty) Limited T/A Azania Security (“the employer”) and Security Employees National Provident Fund (“the fund”)

Introduction

[1] Your complaint concerns the non-payment of your withdrawal benefit. The complaint was received on 13 July 2005 and a letter acknowledging receipt thereof was sent to you on 19 August 2005. On the same date a letter was dispatched to the employer requesting it to submit a response by 9 September 2005 and on 23 November 2005 a letter was sent to the fund requesting a response by 14 December 2005. After resending our letter, the fund’s response was received on 21 February 2006. No response was received from the employer. On 25 August 2006 the fund’s response was sent to you for a reply by 8 September 2006 but no reply has been received from you. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. As the facts are well known to the parties I shall not burden this determination by repeating them here.

Complaint

[2] You are unhappy about not receiving a withdrawal benefit after you left your employer (date not known). You state that the employer made deductions from your salary on a regular basis, but after you left its service it did not assist you to apply for the benefit.

The fund’s 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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

- [3] The fund states that it received contributions on your behalf for three months only, being February, March and May 2003, and a total fund credit of R249.92 is payable to you. The fund has requested that you complete an application form to apply for this benefit.

Determination and reasons therefor

- [4] From the copies of the salary slips that you have submitted, it is evident that your former employer made regular provident fund deductions from your salary. However, it appears that the employer did not pay the contributions (except on three occasions) to the fund in order to secure a benefit for you. My assistants have attempted, on numerous occasions, and over a period of time, to make contact with your former employer, by means of letters, telephone and electronic mail, but without success. Furthermore, the fund advised my assistants that the employer's telephone numbers are no longer in existence, that its mail to the employer is returned, and that the offices no longer exist.
- [5] The evidence shows that the fund did not receive all the contributions which were deducted from your salary by your former employer. Although all our efforts to locate your former employer have been fruitless, I am prepared to make an order against it in the event that you are successful in this regard.
- [6] Further, it is a criminal offence, in terms of section 37 read together with section 13A of the Act, for an employer to fail to pay contributions to the fund after making deductions from the employees' salaries for that purpose. Because this practice at face value constitutes theft, I shall also refer this matter to the prosecution authorities for investigation.

Relief

- [7] The order of this tribunal is as follows:
- [7.1] the fund is directed to calculate the benefit, with your assistance if required, that you would have been entitled to in terms of the rules of the fund, had it received the contributions due on your behalf by your former employer, AZA Day and Night Security (Pty) Limited, within four weeks of the date of this determination;
- [7.2] the fund is further directed to pay you the current amount being held on your behalf in the fund, less any permissible deductions in terms of the relevant legislation, within two weeks of the date of this determination;

[7.3] AZA Day and Night Security (Pty) Limited, trading as Azania Security, is ordered to pay you the difference between the amount calculated in [7.1] and the amount paid to you in terms of [7.2], within six weeks of the date hereof, plus interest at the rate of 15.5% per annum, from the date of termination of service to the date of payment.

Dated at Cape Town on this the day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator