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Please quote our ref: PFA/NC/3889/05/LS

## **DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – D JANUARY v TELKOM RETIREMENT FUND**

### Introduction

[1] This complaint concerns an amount which you allege the fund still owes you. The complaint was received by this office on 8 June 2005 and a letter acknowledging receipt thereof sent to you on 7 July 2005. On 11 July 2005 a letter was dispatched to the respondent giving them until 1 August 2005 to file a response to the complaint. The response dated 29 July 2005 was received on 29 July 2005. On 5 August 2005 the response was sent to you for a reply by 19 August 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

### Complaint

- [2] You are a former member of the Telkom Retirement Fund (“the fund”). You retired on the grounds of ill health with effect from 31 July 1998.
- [3] There are three legs to your complaint. The first is that after the fund deducted the amount owing by you in respect of a housing loan, the balance of your benefit was never paid to you. When you made enquiries in this regard, one Mr Mike Smith advised you that you had signed certain documentation wherein it stated that you had elected to invest your money (you do not specify into which investment vehicle) on a permanent basis.
- [4] You state that you have no knowledge of any such documents. You state further that you later learnt that Mr Smith drew the money (an amount of R4000) from the Pretoria pay point and sent it to the Kimberley branch of

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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

- Old Mutual. You state that thereafter an Old Mutual official telephoned you to advise that Mr Smith had sent the money back again to Pretoria.
- [5] Your second complaint concerns what you refer to as the “Kommunikasie Werkers polis”. You state that your wife passed away on 29 June 2001 and you have still not received any payment from the latter.
- [6] Your third complaint concerns your membership of Legal Wise.
- [7] In a letter dated 4 September 2006 my assistant requested you to clarify certain aspects of your complaint. The following questions were put to you:
1. Is it your contention that you never received any lump sum benefit from the fund?
  2. Are you currently receiving a monthly pension from the fund?
  3. According to you the fund still owes you an amount of R4000.80. From where is this figure derived?
  4. You refer in your complaint to one Mr Mike Smith. Who is Mr Smith and how would it have been possible for him to gain access to your money?
- [8] You replied in a fax received on 12 September 2006 but failed to address all the above questions. The upshot of your reply was that you would like clarity on the benefit you received. You would also like to know what gave Mr Smith “the right to make decisions on [your] money without [your] knowledge”. You confirmed that you are currently receiving a monthly pension of R1 594.47.

### Response

- [9] The fund states that you went on ill health retirement with effect from 31 July 1998 whereupon you became entitled to a lump sum benefit and a monthly pension.
- [10] The fund further confirms that a housing loan of R10 740 was deducted from your lump sum benefit of R69 554.55 in terms of section 37D(b)(1)(bb) of the Act. The balance of R58 814.55 was paid into your bank account on 29 September 1998. You also commenced to receive a monthly pension of R1 020 which has since increased to R1 467.19.
- [11] The fund contends that there is no outstanding amount owing to you.
- [12] Regarding your issue with the “Kommunikasie Werkers polis” and your

membership of Legal Wise the fund states that it is not in a position to comment.

- [13] I note that although you were invited to reply to the fund's response in a letter dated 5 August 2005, you elected not to do so.

Determination and reasons therefor

- [14] On your disablement, you became entitled to a disability benefit in terms of rule 6.3 which reads:

- "(1) Upon the MEMBER becoming PERMANENTLY DISABLED, the MEMBER shall retire from SERVICE and become entitled, from the time of his PERMANENT DISABLEMENT, to a pension equal to 60% of his PENSIONABLE EMOLUMENTS or a pension secured by his MEMBER'S SHARE based on a conversion factor as decided by the TRUSTEES acting on the advice of the ACTUARY, whichever is the greater.
- (2) At the request of the MEMBER made at the time of retirement in terms of this RULE, the TRUSTEES may at their discretion commute for a cash payment up to one-third of the PENSION described in (1) above. Such cash payment shall be calculated by the ACTUARY and shall vest on the first day of the month immediately following the day such MEMBER leaves the SERVICE of the EMPLOYER. The PENSION shall be reduced by the amount thereof which is commuted in terms of these RULES."

- [15] In terms of rule 6.3 on your disablement you became entitled to a pension. You also had the option to commute up to one-third of the benefit which option you elected. I enclose the breakdown provided by the fund reflecting the calculation of both the pension and lump sum amount.

- [16] In your initial letter of complaint you stated that the fund failed to pay you this lump sum. However in your subsequent letter you do not raise this issue at all despite question 1 of my assistant's letter dated 6 September 2006 (see paragraph 7 above). I must therefore assume that either you did receive the lump sum benefit or that you no longer wish to pursue this aspect of your complaint.

- [17] Regarding the pension, you concede in your letter received on 12 September 2006 that you are currently receiving a monthly pension of R1 594.47 but express concern that it is too little considering the number of years you worked for Telkom.

- [18] Firstly it must be remembered that you elected the cash option which reduced the monthly pension amount. The fund's calculations show that had you elected to receive the full pension (with no commutation), you would have become entitled to a monthly pension of R1 530.45 on the date of your retirement in 1998 (as opposed to R1 020.30).

