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Our ref:PFA/EC/3762/2005/SG

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): M P Manyathi v Rhodes University Pension Fund/ Rhodes University**

### Introduction

1. This matter concerns the nature and the amount of the benefit paid when you exited the fund.
2. The complaint was received by this office on 3 August 2005, and a letter acknowledging receipt thereof was sent to you on 12 August 2005. The responses to the complaint were received by this office on 2 September 2005 and 4 October 2005. 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.

### Factual Background

3. You are an erstwhile employee of the Rhodes University (“the employer”) and you were a member of Rhodes University Pension Fund (“the fund”) from 1984 until March 2005. When you exited the fund, you received a nett withdrawal benefit of R66 295,02.

### The complaint

4. You are not satisfied with the amount of the benefit you received and contend that you are entitled to a greater benefit. You allege that the fund paid you an incorrect benefit as you were medically boarded and not dismissed from service. You request me to investigate whether you were

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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

paid the correct benefit.

### The response

5. The fund disputes that you were medically boarded and contend that you were dismissed from service for theft following a disciplinary hearing. It tendered as evidence a record of the disciplinary hearing. For this reason, it contends that you did not qualify for either early retirement or disability benefit and that you were correctly paid a withdrawal benefit. It further contends that you were paid your benefit in full and in terms of its rules. It states that the payment of your benefit is regulated by Rule 6.1 of the fund's rules.
6. The fund contends that Rule 8.7(1) provides for payment of greater benefit. However, it submits that the payment of a greater benefit is only paid by the fund at the employer's request. In the present matter, no such request from the employer has been made and thus you are not entitled to a greater benefit.
7. It further avers that pursuant to the lodgment of the complaint with this office, the fund referred the matter to the employer for consideration as regards the payment of a greater benefit. The fund submits that the employer has since considered the matter and decided not to make a request for payment of a greater benefit. It is submitted that the employer considered the following relevant factors:
  - That you were dismissed from service for theft and paying you a greater benefit would amount to a reward for your dishonest.
  - You are middle aged and the prospects of you finding another employment are good.
  - The employer considered the amount of the benefit you already received and found it to be fair.
  - The employer looked at the financial soundness of the fund and considered that the circumstances do not permit for awarding you a greater benefit.

### Determination and reasons therefor

8. The fund can only rely on the evidence provided to it by the employer as regards the benefit payable to you. The fund has been advised by the employer that you were dismissed from service and thus you are entitled to a withdrawal benefit. The issue as regards whether you were medically

boarded or dismissed from service is an employer-employee related matter and thus falls outside the jurisdiction of this office. Should you wish to challenge the manner in which your services were terminated, you may refer the matter to the Commissioner, Conciliation, Mediation and Arbitration ("CCMA). Should the CCMA find in your favour in this regard, you may refer the matter back to the fund for consideration. In the circumstances, the fund correctly paid you a withdrawal benefit.

9. The succinct provisions of Rule 6.1 which regulate the payment of your benefit provides:

"6.1 If a Member leaves Service prior to his Normal Retirement Date and is not entitled to benefits under any other Rule, an amount equal to the Member's Accumulated Contributions shall be paid to him;

plus

An additional amount equal to a percentage of the Member's Accumulated Contributions. Such percentage is calculated as  $S \times 100/120$ ;

S = total number of completed months of membership of the Fund, subject to a maximum of 120;

plus

the Member's Transfer Value."

10. The fund provided the computation of the benefit as follows:

"Member Contributions	R22 574, 05
Interest on member Contributions	R 2 414, 79
Additional Benefit Entitlement	R51 784,93
<b>Gross Benefit</b>	<b>R80 050,02</b>
Plus: Interest on Late Payment	R 362,40
<b>Total Benefit Payable</b>	<b>R80 412,42"</b>

11. Tax of R12 079,26 was deducted from your benefit and the nett benefit of R66 295,02 was paid to you. In my view, the fund paid your benefit in full and in terms of its rules.

12. Rule 8.7(1) provides for the enhancement of the member's benefit and stipulates:

"The Trustees may, at the request of the Employer, increase any benefit payable to or in respect of any Member on such basis as shall be determined after consultation with the Actuary, subject to such conditions as they may impose and subject to the approval of the Commissioner."

13. It is apparent from the above rule that a member's benefit can only be enhanced at the request of the employer. You did not receive an

enhanced benefit because the employer never made a request to that effect. Pursuant to the lodging of the complaint with this office, the fund referred the matter to the employer for consideration. The employer considered the matter and decided not to make a request for the enhanced benefit. The employer advanced reasons that it took into consideration to arriving at its decision. I am satisfied that the employer has considered the matter and exercised its discretion judiciously. That the employer's decision is not in your favour does not in itself warrant the intervention of this office. It is not the role of this office to second-guess the decision of the employer but rather to ensure that the employer has not abdicated its duties and further that it has properly considered the matter.

14. The complaint can therefore not succeed.

**DATED AT CAPE TOWN ON THIS                      DAY OF                      2007**

Yours faithfully

Vuyani Ngalwana  
**Pension Funds Adjudicator**