



Please quote our ref: PFA/NW/3626/05/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 ("the ACT"): P J CONRADIE v MINE OFFICIALS PENSION FUND/ANGLOGOLD ASHANTI PENSION FUND/OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED

Introduction

[1] This matter concerns your eligibility for a death benefit and your allegation that your monthly pension was reduced. The complaint was received by this office on 10 May 2005 and a letter acknowledging receipt thereof sent to you on 28 June 2005. On 24 June 2005 letters were dispatched to the respondents giving them until 15 July 2005 to file a response to the complaint. On 1 July 2005 Old Mutual Employee Benefits responded. On 6 July 2005 MPF Management Services responded. And on 11 July 2005 AngloGold Ashanti Pension Fund responded and such response was copied to you. A reply was received from you on 25 July 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.

The factual background

- [2] In 1983 you were employed by Vaal Reefs Exploration and Mining Company Limited. It appears that the Vaal Reefs Exploration and Mining Company Limited entered into an agreement at about the same time in terms of which your conditions of employment would change and you would be employed by Inter Mine Services OFS Limited ("the employer"), a subsidiary of Anglo American Limited. Subsequent to the conclusion of that agreement you commenced working for the employer until you retired on 31 December 1989.
- [3] Before 1983, the Vaal Reefs Exploration and Mining Company Limited participated in the Mine Officials Pension Fund and by virtue of your employment at the time you were a member of the Mine Officials Pension Fund. It further appears that from the date that Vaal Reefs Exploration and Mining Company Limited entered into an agreement in

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), Solomzi Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

terms of which your conditions of employment would change, you ceased to contribute to the Mine Officials Pension Fund with effect from 28 February 1983. However, you remained a non-contributing member of the Mine Officials Pension Fund.

- [4] After 1983, the employer commenced its participation in the Anglogold Pension Fund (“the fund”). By virtue of your employment you became a member of the fund. On 18 April 1997, you referred a letter to the Mine Officials Pension Fund where you wanted to know, firstly, what had happened to your contributions that were made to it while you were a member. Further you wanted to know, whether your wife would be entitled to a widow’s pension upon your death. If not, you enquired whether you had to apply for same. Secondly, you enquired whether it would be possible for the pension benefits from the Mine Officials Pension Fund and the fund to be paid on the same date.
- [5] On 13 May 1997, the Mine Officials Pension Fund responded to your letter dated 18 April 1997. It said no death benefit will be payable upon your death. Further, it said as you had opted for a widow’s pension, upon your death your widow will be entitled to widow’s pension payable for the rest of her life. Furthermore, as the monthly pensions are paid to you by different pension funds, it said they cannot be paid on the same date.
- [6] However, the Mine Officials Pension Fund sent you a letter dated 25 September 1997, wherein it said:
- “Die fonds se rekords toon dat in die geval van u afsterwe ’n voordeel huidiglik ten bedrae van R45 740.70 betaalbaar is vanaf die Sterftevoordeelskemavordeel.
- Aangeheg vind u ’n nominasievorm wat voltooi en aan die Fonds teruggestuur moet word.”
- You contend that this letter is proof that upon your death a death benefit is payable from the Mine Officials Pension Fund.
- [7] After the 25 September 1997 letter the Mine Officials Pension Fund sent a letter to you dated 17 December 1997, and in this letter it referred you to its letter of 25 September 1997. It stated that it had made an error in its letter by saying upon your death a death benefit will be payable.
- [8] As your monthly pension is being paid from the Mine Officials Pension Fund and the fund, the fund entered into an agreement with Old Mutual Employee Benefits to pay that component of your pension that is payable from it. On 8 November 2000, Old Mutual Employee Benefits sent you a letter saying, among other things, as you are the principal pensioner, upon your death the fund will pay out a lump sum equal to three times your monthly pension. You submit that this letter confirms the fact that a death benefit is payable upon your death.
- [9] Further you allege that your pension benefit has been reduced by both the fund and by the Mine Officials Pension Fund.

The complaint

- [10] The complaint is that the Mine Officials Pension Fund refuses to declare that your dependant/s and/or beneficiaries would upon your death be eligible for a death benefit. Further you complain that your monthly pension has been reduced.

The Mine Officials Pension Fund's response

- [11] The MPF Management Services (Pty) Ltd, submitted a response on behalf of the Mine Officials Pension Fund. It raises a point *in limine* that this office lacks jurisdiction to investigate the complaint as the act to which it relates occurred more than three years before you lodged the complaint.
- [12] On the merits as regards the letter dated 25 September 1997 that upon your death a death benefit would be payable, it contends that the letter was given to you in error and that it had duly apologized for this. Further, it submits that as you ceased contributing to the Mine Officials Pension Fund in February 1983 the rules expressly provided that the rights and options open to you excluded any entitlement to lump sum death benefits. Further to that letter, the Mine Officials Pension Fund says as Anglo American Gold Division Services had in 1988 written a letter to it enquiring on your behalf about the death benefits payable, it had responded by sending a letter to Anglo American Gold Division Services informing it that there are no death benefits payable upon your death. The Mine Officials Pension Fund also wrote a letter to you during May 1997, informing you about the same. It also submits that the rules in respect of the death benefit scheme provided that you only enjoyed continued cover for a period of 6 months after ceasing contributions.
- [13] The allegation that your pension was reduced is denied. It is submitted on behalf of the Mine Officials Pension Fund that you have in fact benefited from regular pension increases.

The fund's response

- [14] The Anglogold Pension Fund confirms that you exited it and the Mine Officials Pension Fund on 31 December 1989 and commenced receiving a pension from both entities with effect from 1 January 1990. It says in January 1990 your gross pension payable was R511. 15 monthly without deductions and that it appointed Old Mutual as its agency to pay the pensions.
- [15] It contends that in terms of the fund's rules your pension has been increased with effect from 1 January of every year in accordance with the percentage increase awarded by it. Therefore, your current gross monthly pension is R655. 50.
- [16] However, it further contends that regarding the alleged reduction in pension, Anglo American Limited informed you in a letter dated 25 September 1997 about such reduction. It submits that in that letter Anglo American Limited informed you that your

supplementary pension ceased as a result of a larger increase that was awarded to you in January 1997 by the Mine Officials Pension Fund. As a result thereof when you transferred to the fund you were not in receipt of a supplementary pension.

- [17] Regarding the death benefit payable upon your death, it confirms that in terms of the fund's rules, a death benefit will be payable. Further to that, the fund will also provide your spouse with a spouse's pension upon your pre-deceasing her, which is also payable in terms of the rules.

The administrator's response

- [18] Mrs Wendy Kruger in her capacity as Key Account Manager provided the response. She submits that the administrator took over the administration of the pensioner annuities of the fund with effect from March 1999, and that the administrator was instructed by the fund to pay you a monthly pension of R511.15. To prove that it commenced paying a pension in 1999 and the monthly pensions, it provided this office with an excel spreadsheet dating back to March 1999 until July 2005.

Determination and reasons therefor

- [19] Your complaint falls to be dismissed because it is time-barred in terms of section 30I of the Act. The Act provides as follows:

- “(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.
- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
- (3) The Adjudicator may on good cause shown or of his or her own motion-
- (a) either before or after expiry of any period prescribed by this Chapter, extend such period;
- (b) condone non-compliance with any time limit prescribed by this Chapter.”

- [20] The Constitutional Court in *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) at paragraph 11 highlighted the importance of time limits as follows:

“Rules that limit the time during which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigating damage the interest of justice. They protract the dispute over the rights and obligations sought to be enforced, prolonging the

uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can still be obtained may have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They thus serve a purpose to which no exception in principle can cogently be taken.”

[21] Your complaint arose in 1997 and in 1998 you lodged it with the Financial Services Board (“FSB”). In the same year (1998) the FSB informed you that the Adjudicator has been appointed with effect from 1 January 1998. You lodged a formal complaint to this office which was received 10 May 2005. It has taken you 7 years to lodge a complaint. In your complaint it is apparent to me that you were aware that you had a complaint against the Mine Officials Pension Fund for their alleged refusal to accept that your dependants and/or beneficiaries will be eligible for a death benefit upon your death. And against the fund for its alleged reduction of your pension benefit. But you failed to timeously lodge your complaint. Therefore, your complaint is time-barred in terms of section 30I(1).

[22] However, the enquiry does not end here as section 30I(3) allows the Adjudicator to condone non-compliance with time limits or extend the time limit provided good cause is shown. The Supreme Court of Appeal (or Appellate Division as it was then known) outlined factors that must be met for condonation to be granted in circumstances like these. In *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 532C-F the Court said:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant is the degree of lateness, the explanation therefor, the prospect of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective *conspectus* of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent’s interest in finality must not be overlooked.”

[23] Your explanation for the late lodging of your complaint is that you had not been aware of the existence of this office. However, the FSB informed you about this office’s existence in 1998.

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VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR