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Our ref: PFA/MP/7969/06/VIA

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – B D MOLOTSANE (“the complainant”) v AMPLATS GROUP RETIREMENT FUND (“the first respondent”) and RUSTENBURG PLATINUM MINE LIMITED (“the second respondent”)

1. Introduction

1.1 This matter concerns the computation and payment of the complainant's retirement benefit.

1.2 The complaint was received by this tribunal on 30 March 2006. On 11 April 2006 letters were dispatched to the respondents giving them until 2 May 2006 to submit their respective responses to the complaint. A response was received from the first respondent on 12 May 2006. A response was not received from the second respondent. On 20 June 2006 a copy of the response was sent to the complainant for a reply by 27 June 2006. A follow up letter was sent to the complainant on 24 October 2006. A reply was received from the complainant on 21 November 2006.

1.3 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor follow.

2. The background facts

2.1 The complainant was employed by second respondent from 1961 until 28 February 2005. By virtue of his employment the complainant became a member

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Financial Manager: F Mantsho, Accountant: R Soldaat

- of the first respondent with effect from 1981 until he left the service of the second respondent in 2005.
- 2.2 On 10 April 1996 the complainant's service with the second respondent was terminated because of industrial action that he and other employees allegedly participated in. The first respondent consequently paid the complainant a net withdrawal benefit of R19 577.65.
- 2.3 The complainant was re-employed by the second respondent and became a member of the first respondent.
- 2.4 On 28 February 2005 the complainant retired from the service of the second respondent. The first respondent paid the complainant a net retirement lump sum benefit of R58 968.17, comprising his total fund credit of R57 984.27 plus late payment interest of R1 841.36, on 9 March 2005.

3. The complaint

- 3.1 The complainant is dissatisfied with the retirement benefit of R57 984.27 which he received from the first respondent when he retired from the service of the second respondent in 2005. The complainant states that the retirement benefit is insufficient if it is compared with the fact that he worked in the mines for 45 years.

4. The response

- 4.1 The first respondent states that the complainant was not member of it for 45 years. According to the first respondent it was established only in 1980 and the complainant first became a member of it in 1981 until 1996, when he left the service of the second respondent. The first respondent further states that the complainant was paid a net withdrawal benefit of R19 577.55 when he left the service of the second respondent in 1996. The first respondent further states that the withdrawal benefit that was paid to the complainant was commensurate with contributions made by the complainant and the second respondent up to 1996 together with growth thereon.
- 4.2 The first respondent further states that the complainant received an additional amount of R9 977.31 in 1999. According to the first respondent this amount was due to the complainant because of the vesting scale that was applied to his withdrawal benefit. Thus, the first respondent states that the complainant received his full benefit entitlement for the period of his membership from 1981 to 1996.
- 4.3 According to the first respondent the complainant was re-employed by the second respondent where after he again became a member of it until his retirement in February 2005. The first respondent states that the complainant was paid a cash lump sum retirement benefit of R58, 958.17 on 9 March 2005. The first respondent states that the complainant was paid his retirement benefit

- provided that a member may elect to commute part or the full benefit for a lump sum. The definition of fund credit is summarized in paragraph 4.5 *supra*.
- 5.3 The complainant essentially alleges that his retirement benefit should have been more than what he received considering the fact that he was in the second respondent's service for 45 years. This averment by the complainant is flawed. Firstly, the first respondent is a defined contribution provident fund. This means, the member's benefit at retirement will be equal to the contributions paid by the member and the employer less any expenses, plus investment growth in the form of interest as declared by the trustees in consultation with the fund actuary. Thus, the number of years that the complainant was a member of the first respondent is not relevant when calculating a retirement benefit payable by a defined contribution provident fund. Put differently, the total contributions less expenses plus declared interest rates determine the retirement benefit that will become payable to the member.
- 5.4 Notwithstanding the above, it should also be borne in mind that the complainant's membership of the first respondent could not have commenced in 1961 because it was only established on 1 July 1980. According to the first respondent the complainant joined in 1981. Furthermore, there was also a break in the complainant's membership of the first respondent when he left the service of the second respondent in 1996. The complainant was also paid a withdrawal benefit when he exited the first respondent in 1996. Thus, when the complainant rejoined the service of the second respondent and consequently became a member of the first respondent once again, his pensionable service started afresh.
- 5.5 Taking cognizance of the contents of the preceding paragraphs, this tribunal is satisfied that there is nothing in the papers before it to suggest that the computation of the complainant's retirement benefit was not done in terms of the rules of the first respondent. Thus, this tribunal is satisfied that the complainant's retirement benefit was correctly computed.
- 5.6 In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS THE DAY OF 2008

Yours faithfully

Mamodupi Mohlala
Pension Funds Adjudicator