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Please quote our reference: PFA/GA/4647/2005/ZC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – SR JENNISON (“the complainant”) v IQ BUSINESS GROUP PENSION FUND (“the first respondent”) AND GLENRAND MIB BENEFIT SERVICES (PTY) LTD (“the second respondent”)

1. Introduction

- [1.1] The complaint concerned essentially two issues: Firstly, the complainant’s contributions to the first respondent was not fully reflected in the breakdown of his withdrawal benefit provided by the second respondent. Secondly, no fund growth figure/s had been made available to the complainant for the duration of his membership of the first respondent nor was any fund growth indicated in the calculation of his withdrawal benefit provided by the second respondent.
- [1.2] The complaint was received by this office on 22 July 2005. A letter acknowledging receipt thereof was sent to the complainant on 19 September 2005, on the same date a letter was dispatched to the first respondent giving it until 10 October 2005 to file its response to the complaint. Another letter was dispatched to the second respondent on 19 September 2005 giving it until 10 October 2005 to file its response to the complaint. A response was received from the second respondent dated 9 December 2005 received on 9 January 2006. No response was received from the first respondent. This response was forwarded to the

M Mohlala (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), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

Office Manager: L Manuel

complainant on 16 February 2006. The complainant filed further submissions on 23 August 2005 and 1 March 2006, respectively.

- [1.3] After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- [2.1] The complainant commenced employment with the IQ Business Group (“the employer”) during July 1998 and he joined the first respondent shortly thereafter.
- [2.2] During February 2005 the complainant resigned from the employer and became entitled to a withdrawal benefit from the first respondent.

3. Complaint

- [3.1] The complainant submitted that his contributions together with the employer contributions (in the amount of R25 537.00) for the period 1 July 1998 to January 2000 had not been reflected in the amount of his withdrawal benefit breakdown provided by the second respondent.
- [3.2] He further submitted that he had not received any benefit statements since he joined the first respondent. He submitted that it was only on 8 February 2005 that he received his first contribution breakdown at which stage he became aware of the shortfall of his benefit.
- [3.3] He further submitted that to enable him to accurately determine the value of his withdrawal benefit he requires the growth figures of the fund for the duration of his membership with the first respondent . The complainant submits that the respondents have failed to provide him with the said growth figures notwithstanding his request for same.
- [3.4] The relief he seeks from this Tribunal is obtaining his “misappropriated contributions” and fund growth on his benefit from his commencement date in July 1998 until date of final payment of his withdrawal benefit.
- [3.5] On 31 August 2005 the complainant made further submissions to this Tribunal the nub of which was that subsequent to lodging his complaint with this Tribunal the “misappropriated funds” totaling R25 537.00 had been paid by the second respondent. He submitted that he received his entire withdrawal benefit save for the growth thereon. Accordingly, he submitted that the only remaining issue that required determination was what the amount of the growth was on his contributions (and the employer’s portion of his contributions) during his membership of the fund

and payment thereof.

- [3.6] In the complainant's further submissions which this Tribunal received on 3 March 2006 he submitted that apart from no growth having been paid on his contributions there was also a shortfall of his contributions paid to him in the amount of R1242.37, which the respondents failed to explain. He submitted that the gross amount paid by the respondents was in fact R24 294.63 and not R30 712.85 as alleged by the second respondent.

4. Second Respondent's response

- [4.1] Mr D Morris of the second respondent filed a response on its behalf.
- [4.2] He submitted that one of the problems with the first respondent was that the records and the handover from the previous consultants, p.e.o.p.l.e. the pension administration arm of NMG, had not yet been finalised.
- [4.3] He submitted that the second respondent had, however, to a large extent rebuilt the records of the first respondent, which exercise would be finalised shortly.
- [4.4] He further submitted that the take-on value of the complainant's benefit was in fact R30 712.85, which in fact exceeded the complainant's calculation of R25 537.00 as per his complaint. He submitted that the take-on value was computed as follows:

"This take-on value is computed as follows:

R6 418,22 being the initial value

R24 294,63 being the amount brought forward from the previous administrators,

R30 712,85 which is the total take-on value of the complainant."

- [4.5] He further submitted that the growth on the first respondent would be finalised once the rebuild of the first respondent had been completed, which he submitted would be in early 2006.
- [4.6] With regard to the relief the complainant seeks, he submits that the complainant had received net withdrawal benefits in the amount of R19 021.60 and R70 104.18, respectively.
- [4.7] Lastly, he submits that the respondents' liability to the complainant has been extinguished.

5. Determination and reasons therefor

[5.1] The first complaint issue relating to the contribution amount of R25 537.00 not having been reflected in the breakdown of the complainant's withdrawal benefit has to a large extent been resolved subsequent to lodging his complaint since on the complainant's version he has received R24 294.63 of the aforesaid amount. Thus he submits that in respect of his contributions the shortfall of R1242.37 has not been explained by the respondents.

[5.2] The second issue that falls for determination is the question of growth on the member's funds during his membership of the fund.

[5.3] In terms of the first respondent's rules following the termination of employment the member became entitled to a withdrawal benefit. The apposite portion of the rule reads as follows:

"BENEFITS ON TERMINATION OF SERVICE

6.1 ...

6.2 Cash Benefit

6.2.1 The MEMBER'S EQUITABLE SHARE

plus

6.2.2 The MEMBER'S INDIVIDUAL ACCOUNT."

[5.4] "EQUITABLE SHARE", in turn, "means, in respect of a MEMBER, the total of the net retirement contributions paid in respect of the MEMBER in terms of Rule 12.1 and 12.2, accumulated with interest and bonuses to the date of payment of the benefit."

[5.5] Rules 12.1 and 12.2, in turn, provides for the member's and employer's contributions (7,5% of the member's monthly salary, respectively) to the first respondent.

[5.6] "INDIVIDUAL ACCOUNT" is defined as:

"... the account held for the MEMBER in respect of any contributions in terms of RULES 12.3 and 12.4 which shall be invested in terms of the GROUP RETIREMENT POLICY."

[5.7] Rule 12.3 further provides for supplementary contributions, which includes transferred benefits from an approved fund to the first respondent, which benefit is credited to the member's individual account. Rule 12.4 makes provision for additional voluntary contributions made by the member by agreement with the employer.

- [5.8] The fund and board of trustees are enjoined to do that which is set forth in the rules of the fund (see section 13 of the Act and *Tek Corporation Provident Fund and Others* [2000] 3 BPLR 227 (SCA) at 239 D – F).
- [5.9] Accordingly, the complainant is entitled to his cash withdrawal benefit pursuant to Rule 6.2 of the first respondent's rules, which comprises the payment of the total of the net contributions paid in respect of him together with interest and bonuses to the date of payment of the benefit. To the extent that there has been a shortfall in the payment of the complainant's total net contributions he is entitled to such amount. Further, in terms of the rules of the first respondent the complainant is entitled to growth on his contributions, in the event that the first respondent showed growth during his membership of the first respondent.
- [5.10] Despite the second respondent's submission that the growth on the complainant's benefit will be determined as soon as the second respondent's rebuild has been finalised, which it submitted would be in early 2006, to date such rebuild has not been finalised as a result of which no growth has been calculated let alone paid. This delay of rebuilding a fund for almost two years cannot be countenanced.

Relief

- [5.10] In the circumstances, the ruling of this Tribunal is as follows:
- [5.10.1] The first respondent is ordered to calculate the complainant's withdrawal benefit in it in terms of rule 6.2 of its rules, within 14 days of the date of this determination.
- [5.10.2] The first respondent is further ordered to pay the complainant the benefit computed in terms of paragraph [5.10.1], less amounts already paid, and further less deductions in terms of sections 37A and 37D of the Act, within 21 days of the date of this determination.
- [5.10.3] The first respondent is further ordered to pay interest on the amounts to be paid to the complainant in terms of paragraph [5.10.2] at the rate of 15.5% *per annum*, reckoned from 31 March 2005 until the date of final payment, within 21 days of the date of this determination.

DATED AT JOHANNESBURG ON THIS DAY OF 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR