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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): T. BOOI v SALA PENSION FUND (“the fund”) and SOUTH AFRICAN POLICE SERVICE (“the employer”) and OLD MUTUAL LIFE ASSURANCE COMPANY SOUTH AFRICA LTD (“Old Mutual” or “the insurer”)

Introduction

- [1] This matter concerns the amount you received from the fund in respect of your retirement on disability grounds. The complaint was received by this office on 20 July 2005 and a letter acknowledging receipt thereof sent to you on 3 August 2005. On 5 August 2005 letters were dispatched to the respondents giving them until 26 August 2005 to file responses to the complaint. A response dated 19 September 2005 was received from the employer on 27 September 2005. A response dated 16 September 2005 was received on the same day from Old Mutual acting on behalf of the fund and in its own capacity as administrator of the fund and underwriter of the reinsured benefits. Both responses were copied to you, but you have not replied to the responses despite invitation to do so. A further and more detailed response dated 18 October 2005 was received the following day from Old Mutual in response to further investigation from this office. Having examined and investigated the complaint, I consider it unnecessary to hold a hearing in this matter. My determination, together with reasons therefor, is set out below.

Complaint

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

- [2] You were a member of the fund arising out of your service with the employer commencing in August 1985. On 8 March 2002 you were discharged from service on grounds of medical fitness as a result of an accident in which you were involved. Neither the nature of the accident, the extent of your injuries, nor the degree to which they affected your ability to discharge your duties has been set forth in your complaint.
- [3] However, it appears that as a consequence of the above accident, your service was terminated, and you exited the fund. You state that you were paid a "gratuity" on 19 September 2002. According to the annexure you have attached this was paid by the fund in an amount of R181 480,17. You thereafter applied for a disability benefit from the fund. This was declined on the grounds that your employer had not submitted the claim for the insured portion timeously. However, between December 2004 and May 2005, the fund made further payments to you in the amounts of R40 000, R29 580, and R70 208 (a total of R139 788).
- [4] You claim that you were entitled to a disability benefit of twice your annual salary. You calculate this as twice times R75 435, arriving at a figure of R150 870. You state that since you only received R139 788, the fund has not paid you the full benefit to which you are entitled.
- [5] You have requested that I investigate whether your benefit was correctly calculated. You also query why no interest has been paid in respect of the amounts received some two years after you exited the fund.

Responses

- [6] A response has been received from the employer essentially stating that it is the fund's duty to assist the member to complete and submit the claim forms in respect of disability exits. In this regard, it states that the SAPS Head Office cannot process all these claims in the relatively short time allowed, since the job descriptions of its employees vary tremendously depending on rank and area deployed. In addition, these job descriptions are not kept at Head Office, but at the branch where the employee is stationed.
- [7] A response was received from Old Mutual on behalf of itself as well as the fund. It confirms that the claim for disability benefits was repudiated on the grounds that the employer did not submit the claim within the prescribed period, which is defined in the rules read with the policy governing the reinsurance of the benefit. It submits that in terms of these provisions the claim fell to be lodged 4 weeks after the six month waiting period commencing from the date of disability. It contends that although your last

day of active service was 2 August 2000, the claim was only submitted on 6 June 2002, more than two years after the date of disability.

[8] The trustees of the fund, however, took a decision to pay to you (and other members in a similar situation, whose disability claims had been declined on the basis of non-timeous submission) a gratuity as a gesture of goodwill. In addition it paid you an ill-health benefit in terms of the rules of the fund. This was in addition to your early retirement benefit, which is paid monthly. The fund summarises the benefits paid to you as follows:

[8.1] An early retirement benefit of R4 042 per month in terms of rule 5.1.2 , which commenced from 30 April 2002;

[8.2] An ill health benefit of R181 480 (R179 283 together with late payment interest of R2 197 paid to you on 18 September 2002); and

[8.3] A gratuity benefit of R140 000 paid in lieu of the disability benefit which was declined by the insurer. The gratuity was paid in three instalments on the following dates:

- R40 628 on 23 November 2004
- R29 580 on 9 May 2005
- R70 208 on 12 May 2005

(These figures actually add up to the amount of R140 416, which has presumably been rounded off to the R140 000 the fund refers to as the gratuity.)

[9] Interest was paid on the ill-health benefit since, according to the fund, no waiting period is required for the payment of this benefit. All that is required is for the employer to submit a medical report with a recommendation for an ill-health benefit to the trustees. If the trustees are satisfied that the member is indeed disabled, the benefit is immediately payable. The fund further states that it did not pay interest on the amounts paid in respect of the gratuity as it amounted to an *ex gratia* payment outside of the rules of the fund.

[10] It adds that the employer has been made aware of the prejudice that has resulted to the members as a result of their delays in submitting claims for assessment.

Determination and reasons therefor

[11] I have been placed in possession of the rules of the fund. The entitlement

to a disability benefit is set out in rule 7.1 and reads as follows:

“If a MEMBER is disabled before the NORMAL RETIREMENT DATE and such disablement has continued for the duration of the waiting period (as defined in the policy), a disability benefit equal to twice the MEMBER’S FINAL SALARY will become payable. The disability benefit is subject to certain conditions and requirements which are set out in the policy issued by the UNDERWRITER.”

- [12] It is correct, as contended by the fund, that clause 6.7 of the insurance policy entered into between the fund and Old Mutual for the underwriting of risk benefits does place time limits on the submission of claims for disability benefits. In this regard clause 6.7.1 stipulates that the employer must lodge a formal claim within four weeks of expiry of the waiting period, failing which the insurer will not be obliged to consider any disability claim. The waiting period is defined in clause 1.16 as a period of absence of six consecutive months from service calculated from the commencement of the member’s absence from work.
- [13] Since your last day of active service was 2 August 2000, a fact undisputed by you, the claim ought to have been lodged by the employer by no later than 3 March 2001. According to the evidence, the claim was only submitted on 6 June 2002. Old Mutual was therefore within its rights as recorded in clause 6.7.1 to repudiate the claim, and the fund was not obliged to pay the insured benefit as the conditions of the policy had not been complied with.
- [14] The reason for examining these provisions is to alert the employer to the fact that, were it not for the *ex gratia* payment by the fund (which will be discussed below), it may well have been liable for an award of damages by virtue of its failure to submit your disability claim timeously. The rules clearly impose an obligation on the employer, not the fund as it contends in its response, to submit the relevant application and documentation within the prescribed time.
- [15] Looking at the benefits you have actually received from the fund, however, it appears to me that payment has been made to you in excess of your entitlement. In terms of the rules, you became entitled to either an ill-health benefit or a disability benefit, not both. In addition, you also qualified for an early retirement benefit by virtue of the termination of your service on grounds of ill-health. The latter is being paid to you monthly in an amount of R4042 per month, and has not been raised as a grievance in your complaint.
- [16] You claim that you were entitled to a disability benefit of R150 870 (twice your annual salary). However, the fund has paid you a total of R321 896 (R140 416 in respect of the gratuity and R181 480 in respect of the ill health benefit). On your version you have only received R321 268, but

nothing turns of this as it is still substantially in excess of the twice annual salary to which you were entitled under the fund rules.

[17] I am therefore satisfied that you obtained more than your due benefit, and no further claim lies against the fund or the employer.

Relief

[18] The complaint is dismissed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2006.

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR