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Please quote our reference: PFA/EC/9517/2006/AM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – V A SIQULA (“the complainant”) v PRINTING INDUSTRY PENSION FUND FOR S.A.T.U MEMBERS (“the first respondent”) and PPWAWU NATIONAL PROVIDENT FUND (“the second respondent”)

1. Introduction

- 1.1 The complaint concerns the failure by both the firsts and the second respondents to pay the complainant his withdrawal benefit.
- 1.2 The complaint was received by this office on 11 July 2006. A letter acknowledging receipt thereof was sent to the complainant on 24 August 2006. On 25 August 2006 a letter was dispatched to the respondent giving it until 26 September 2006 to file its response to the complaint. A response was received from the respondent on 4 October 2006. This response was forwarded to the complainant on 11 October 2006. The complainant however omitted to reply.
- 1.3 After considering all the written submissions presented, it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefor appear below.

2. Factual Background

- 2.1 The complainant was employed by E.H Walton (Pty) Ltd on a permanent basis with effect from March 1998. He became a member of the first

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

- respondent by virtue of his employment with E.H. Walton (Pty) Ltd until 30 June 2002.
- 2.2 On 10 April 2002 the complainant applied to transfer his Fund credit from the first respondent to the second respondent .
 - 2.3 From 30 June 2002 to date of this complaint, the complainant has been a deferred member of the first respondent.
 - 2.4 The complainant states that during 2000 he became a member of the second respondent.
 - 2.5 The complainant further states that when he enquired about his fund credit from the first respondent, he was advised that his fund credit will be transferred from the first respondent to the second respondent.
 - 2.6 The complainant states that he resigned from E.H. Walton on 15 November 2004 and during this period he was still a member of the second respondent.

3. Complaint

- 3.1 The complainant is aggrieved by the failure of both respondents to pay his withdrawal benefit. He accordingly requests this Tribunal to conduct an investigation relating to his withdrawal benefit on both the first and second respondents respectively and order the respondents to pay his withdrawal benefit together with interest from 15 November 2004 when he resigned from his employment until the date of signature of this determination.

4. Responses

- 4.1 This office received responses from the first respondent and second respondents respectively.

PRINTING INDUSTRY PENSION FUN FOR S.A.T.U. MEMBERS's response

- 4.2 The first respondent confirms the complainant's membership with effect from 12 March 1998 until 30 June 2002.
- 4.3 The first respondent further confirms the complainant's application to transfer his fund credit to the second respondent on 10 April 2002. The first respondent also confirms that his application became part of a section 14 application to transfer submitted to the administrators of the second respondent, Lekana Employee Benefit Solutions on 19 December 2003. The section 14 approval certificate dated 16 March

2004 with FSB case number: 89436 was received on 25 July 2005 from the second respondent.

- 4.4 The first respondent states that during March 2005 it came to its attention that the second respondent was under funded to the tune of 6.7 % and the funding level was 93, 3 %. The trustees of the first respondent placed a moratorium on all transfers to and from the second respondent until the fund level had normalised and proof thereof had been received.
- 4.5 The first respondent further states that at the March 2006 trustee's meeting, the decision was made to proceed again with transfers to and from the second respondent as proof was submitted by the actuaries of the second respondent that the fund level had normalised and was at 105,2% as at 30 June 2005.
- 4.6 The first respondent states that as the complainant's fund credit was being transferred from a pension to a provident fund it was necessary to obtain a tax directive on the funds being transferred. This tax directive has now been obtained for all the members on the section 14 application.
- 4.7 The first respondent confirms that the transfer of the funds to the second respondent took place on 9 September 2006 and the amount transferred was R 129,684.96.
- 4.8 The first respondent states that the complainant should approach the second respondent for a refund of his fund credit.

PPWAWU NATIONAL PROVIDENT FUND's response

- 4.9 The second respondent states that the section 14 transfer value from the first respondent was received by it after the complainant's claim had been paid out. This amount will be loaded onto its system and the fund interest from the date the section 14 transfer was received to date of payment will be added onto the benefit and paid to the complainant on 30 November 2007 according to the new banking details provided by the employer.

5. Determination and reasons therefor

- 5.1 It is common cause that there was a transfer of the complainant's fund credit from the first respondent to the second respondent on 19 September 2006. Proof of this transfer in the form of a bank stamped deposit slip dated 19 September 2006 from the first respondent to the second respondent was attached by the first respondent to its response submitted to this Tribunal. The amount so transferred was R129, 684.96.

5.2 It is clear that the at the time of lodgement of this complaint, the complainant had not been paid his withdrawal benefit due to him upon his resignation from E.H. Walton on 15 November 2004. It is also clear that such benefit was subsequently paid to the complainant by the second respondent. It is furthermore clear from the second respondent's response that the complainant's withdrawal benefit paid to him upon his resignation by the second respondent did not include the amount transferred to it by the first respondent. This complaint was lodged by the complainant on 11 July 2006. Transfer of the complainant's fund credit from the first respondent to the second respondent took place on 19 September 2006. The second respondent confirmed in its response dated 19 November 2007 that the said amount will be paid out to the complainant only on 30 November 2007. More than one year has elapsed from the date of transfer of the complainant's fund credit to date of payment of this amount to the complainant. No explanation for such a long delay in paying this benefit over to the complainant was received from the second respondent.

6. Relief

In the result, the order of this Tribunal is as follows:

The second respondent is directed to pay the amount transferred to it by the first respondent on 19 September 2006 directly to the complainant's bank account **WITHIN 14 days** from date of this determination, together with interest thereon calculated at 15.5% from the date of its receipt of the section 14 transfer to date of payment.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR