



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 (“the Act”) – R J BARLOW (“the complainant”) v BRIDGESTONE
FIRESTONE RETIREMENT FUND (“the respondent”)**

1. Introduction

[1.1] This matter concerns the complainant’s dissatisfaction with the variance of the amount of the retirement benefit provided at various stages by the respondent and the retirement benefit actually paid. Further, the complainant complains the amount of interest paid pursuant to the late payment of the benefit.

[1.2] The complaint was received by this office on 24 August 2005 and a letter acknowledging receipt thereof sent to the complainant on 21 September 2005. On the same date a letter was dispatched to the respondent giving it until 12 October 2005 to file a response to the complaint. The response dated 10 October 2005 was received on 21 October 2005. On 14 November 2005 the response was forwarded to the complainant for his reply by 28 November 2005. On 21 November 2005, this office received the complainant’s reply to the response.

[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.

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

2. Factual Background

[2.1] The complainant was employed by Bridgestone Firestone Maxipriest Ltd (“the employer”) until he retired on 1 January 2005. By virtue of his employment the complainant became a member of the respondent. The respondent is administered by Liberty Group Limited (“the administrator “). Upon the complainant’s retirement from the respondent, the respondent became liable to pay the complainant a retirement benefit.

3. The complaint

[3.1] The complaint is that the respondent paid the complainant a retirement benefit less than expected pursuant to amounts provided by the respondent during the course of 2005. Further, the complaint is about the respondent’s alleged failure to pay fund interest on the amount.

[3.2] The complainant contends that his financial broker showed him an e-mail dated 18 May 2005, received from Ms M Warren of the administrator, which (he says) confirmed his share of fund to be R9 425 465.79 as at the “current date”. The complainant says that based on this figure he made preparations to distribute this amount into a living annuity.

[3.3] Further, the complainant contends that on 20 May 2005, his financial adviser informed him that the respondent’s auditors were experiencing problems with the data and that there would be resolution of the final figure before the end of May 2005. The complainant says that before his date of retirement he was aware that the fund would delay in paying his share of fund and that he was prepared to wait as the fund had difficulties in verifying certain data.

[3.4] Furthermore, the complainant states that with effect from 19 July 2005, his instruction that the respondent transfer his share of fund of R9 425 465.79 into the living annuity was not carried out. Therefore, the complainant says the respondent’s trustees placed him in financial difficulty.

[3.5] Moreover, the complainant states that on 13 July 2005, the respondent supplied him with an “amended” share of fund figure of R9 042 223.60 which was as at 18 May 2005. The complainant submits that he is therefore not satisfied with this figure but he argues that he accepted it under duress.

[3.6] The complainant contends that after accepting his initial share of fund amount quoted on 18 May 2005, of R9 042 223.60, he requested that the respondent pay interest on the amount for the period that his fund assets have been “out of the market”, that is from 19 May 2005 until 1 August 2005.

4. Administrator's response

- [4.1] Ms J Gerber, of the administrator, responded on behalf of the respondent.
- [4.2] Respondent contends that the complainant retired from his employment with effect from 31 December 2004. It says that the administrator was advised of the complainant's retirement in March 2005. However, the administrator received his retirement notification on 4 August 2005, which was faxed to it by the respondent's consultant.
- [4.3.] The respondent confirms that at the time of the complainant's retirement his fund assets were invested in the following investment portfolios:

"Corporate International Assets	12.95%
Allan Gray Houseview	22.74%
Coronation Houseview	16.31%"

- [4.4] Further, the respondent contends that upon the administrator's receipt of the information on 4 August 2005 that the complainant had retired, the complainant's share of fund was immediately transferred into a money market portfolio. The respondent submits that this was done to protect his share of fund against market fluctuations. Further, the respondent submits that the fund's action of transferring his share of fund into the money market portfolio is also done to all other fund withdrawals since experience has shown that a share of fund value often decreases prior to payment of a benefit if the assets are left in their respective investment portfolios. Furthermore, the respondent confirms that in March 2005, the fund advised the complainant that his assets have been transferred to the money market portfolio.
- [4.5] Further, the respondent contends that as the complainant was the chairman of the respondent's board of management he was aware that when the respondent converted from a defined benefit to a defined contribution scheme the executive members had been assured that their defined contribution retirement benefit would under no circumstances be less than they would have been had the fund remained a defined benefit scheme. Further, the respondent submits that the complainant was aware that the previous fund administrators had made various errors when calculating the member benefit guarantee ("MBG"). Furthermore, the respondent submits that as a result of the inaccurate member values it elected to undertake a forensic fund audit to ensure that members would receive their correct shares of fund. Therefore, it submits that at the time of the complainant's retirement the forensic fund audit was still in progress and he was aware that no benefits could be paid until the audit had been completed.

- [4.5] The respondent confirms that the fund audit was completed in July 2005, and the complainant's share of fund was confirmed to the respondent by the auditing firm on 1 August 2005. Therefore, the complainant's total share of fund amounted to R9 042 223.60. However, interest earned in the money market portfolio at the time of paying the complainant's benefit on 5 August 2005 had increased to R9 084 722.05 (his share of fund).
- [4.6] Regarding the e-mail of 18 May 2005, from Ms M Warren which showed the complainant's share of fund as R9 425 465.79, the respondent submits that the complainant was aware that this figure was a provisional figure which would change depending on the results of the forensic fund audit. Further, it says that it was going to change in view of the fact that the complainant's value data received from the previous administrators was incorrect.
- [4.7] Furthermore, regarding the fact that the complainant's financial adviser informed him on 2 August 2005, that the respondent had provided him with a final figure representing his share of fund as R10 076 760.00, the respondent says, that figure was based on calculation which showed what his fund value would probably have been had the assets remained invested in the portfolios in which they were previously invested. Therefore, such a figure constituted an estimate which was based on the portfolio returns.
- [17] According to the respondent the complainant's share of fund amounted to R9 084 722.25. On 4 August 2005, Mr A Roos, the respondent's consultant instructed the respondent to transfer R9 000 000, 00 of his retirement benefit to a living annuity and to pay the remaining benefit of R84 722.05 to him in cash. Therefore, with effect from 5 August 2005, his benefit was paid out.

5. Determination and reasons therefore

- [5.1] On 5 August 2005, the respondent paid the complainant's retirement benefit in the amount of R9 084 722.25. The complainant contends, firstly, that the respondent erred in paying him this final benefit on the basis that it had provided him with a retirement quotation letter indicating that it should pay him R9 425 465.79.
- [5.2] Secondly, the complainant contends that because the respondent paid his retirement benefit on 5 August 2005, therefore, it should pay interest on it.
- [5.3] Regarding the complainant's contention that the fund should have paid a higher retirement benefit, the respondent contends that he was aware that

there were errors in calculating the respondent's member benefit guarantee ("MBG"). Therefore, as a result of these inaccuracies all the member's values in the respondent had to be audited. Hence the respondent undertook a forensic audit to ensure that members would receive their correct shares of fund.

[5.4] The complainant attested to the fact that the respondent had difficulties in verifying certain data therefore he confirmed to the respondent that he was willing to wait until the incorrect data was corrected before his retirement benefit was paid out. However, it appears that at a later stage the complainant became impatient and did not want to wait until the rectification of the respondent's data before his benefit could be paid.

[5.5] In the respondent's audit report it is clear that the respondent undertook a forensic audit whereby due to the respondent's incorrect data the MBG had to be re-calculated. It has taken the respondent 7 months to do the forensic audit. On 5 August 2005, the complainant's benefit was paid out. In terms of rule 19.2 of the respondent's rules the respondent's trustees have a discretion to withhold a respondent member's cash withdrawal benefit for a maximum period of 6 months after leaving services. However, in the complainant's case, after the respondent audit was completed it duly paid his benefit. I am not persuaded by the complainant's contention that because of an e-mail dated 18 May 2005, which indicated a higher benefit than that which was paid, therefore, the respondent is liable to pay such higher benefit. During this period the respondent had already commenced with its forensic audit and in his capacity as a former respondent trustee he was aware or ought to have been aware that no benefits could be paid out until the audit was completed. Following the respondent completing the audit in July 2005, it paid his benefit.

[5.6] I am satisfied that as the respondent was liable to pay the complainant a retirement benefit, it discharged its duty. Further, it was not liable to pay a late payment interest as the respondent and the administrator did not cause a delay in paying his benefit out. Furthermore, the respondent cannot be expected to pay such late payment interest because it only received his retirement notification form on 4 August 2005 and duly paid his benefit on 5 August 2005. Moreover, the respondent was expected to pay interest earned from the money market which it did.

[5.7] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR