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Please quote our ref: PFA/GA/17987/2007/MD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 ("the Act"): D KOBEDI ("the complainant") v PRIVATE SECURITY SECTOR PROVIDENT FUND ("the respondent")

1. Introduction

- 1.1 This complaint concerns the respondents' failure to pay a withdrawal benefit to the complainant following the termination of his employment.
- 1.2 The complaint was received by this office on 13 August 2007. A letter acknowledging receipt thereof was sent to the complainant on 22 October 2007. On the same date, the complaint was sent to the respondent giving it until 22 November 2007 to file a response. On 6 November 2007, this office received a response from the respondent. This response was then dispatched to the complainant on 9 June 2008. The complainant has, however, omitted to file a reply in this regard.
- 1.3 Having considered the written submissions before me, I find it unnecessary to hold a hearing. My determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainant alleges that he was employed by Gray Security from March 1998 which was liquidated in 2001. He was thereafter employed by Group 4 Securicor ("the employer") until his resignation in June 2006.

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 Ray (Snr Assistant Adjudicator), N van Coler (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, Senior Accountant: F Mantsho, Accountant: R Soldaat

He had then become a member of the respondent by virtue of his employment.

- 2.2 Following the termination of his services, the complainant became entitled to receive a withdrawal benefit from the respondent.

3. Complaint

- 3.1 In essence, the complainant is aggrieved by the non payment of his withdrawal benefit by the respondent and accordingly requests this tribunal to direct the respondent to pay him.

4. Response

- 4.1 NBC Holdings (PTY) Ltd, the administrator of the respondent submitted a response on its behalf.

- 4.2 It is submitted on behalf of the respondent that the complainant must submit the following documents before his withdrawal benefit is processed:-

- Completed claim form;
- Copy of his identity document; and
- Copy of his recent bank statement

5. Determination and reasons therefor

- 5.1 It is trite law that the payment of benefits is governed by the rules of a fund. In *Tek Corporation Provident Fund And Others v Lorentz [2000] 3 BPLR 227* at paragraph 28, the court stated that:

"What the trustees may do with the fund's assets is set forth in the rules. If what they propose to do (or have been ordered to do) is not within the powers conferred upon them by the rules, they may not do it."

- 5.2 This position is confirmed by section 13 of the Act which provides:

"Binding force of rules- subject to the provisions of the Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming."

- 5.3 The relevant rule governing the payment of a withdrawal benefit in terms of the rules is rule 7.3 which reads as follows:-

“7.3. Payment of Benefit

- 7.3.1 The benefit in terms of this Rule shall be paid to the Member as a lump sum after a period of six months from the date on which the Member left Service
- 7.3.2
- 5.4 In the instant matter, the complainant submitted that his employment was terminated in June 2006. In terms of rule 7.3, as set out above, the member's withdrawal benefit shall be paid after a period of six months from the date of termination of his/her service. Therefore, the respondent ought to have paid the complainant's withdrawal benefit in January 2007, which is a period of six months after the complainant's termination of service.
- 5.5 This tribunal has confirmed that, to date, the complainant's withdrawal benefit has not been paid to him. No cogent reasons have been advanced by the respondent to indicate why it has not adhered to its rules with regard to the payment of the complainant's withdrawal benefit after six months, in this case, 1 January 2007.
- 5.6 In light of the above, the most appropriate relief is to direct the respondent to pay the complainant's withdrawal benefit.

6. Relief

- 6.1 In the result, the order of this tribunal is as follows:
- 6.1.1 The respondent is directed to pay the complainant's withdrawal benefit, less any deductions permitted by the Act, together with interest thereon calculated at a rate of 15,5% from 1 January 2007 until date of payment, within 2 weeks of this determination.

DATED AT JOHANNESBURG ON THIS DAY OF 2008

Yours faithfully

MAMODUPI MOHLALA

PENSION FUNDS ADJUDICATOR