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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – SE HANI v FIDELITY CMS RETIREMENT FUND

Introduction

[1] This complaint concerns the withdrawal benefit you received from the fund and the backdating of your membership to the date on which you commenced employment as a casual worker. The complaint was received by this office on 2 June 2005 and a letter acknowledging receipt thereof sent to you on 14 June 2005. On 14 June 2005 a letter was dispatched to the fund giving it until 5 July 2005 to file a response to the complaint. The response dated 5 July 2005 was received on 5 July 2005. On 12 July 2005 the response was sent to you for a reply by 26 July 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Facts

[2] You were employed by Fidelity Services Group Ltd (“the employer”) as a casual worker with effect from 5 June 1997. With effect from 1 October 2003 you were employed on a permanent basis. You joined the Fidelity CMS Retirement Fund (“the fund”) on the same date.

[3] With effect from 28 February 2005 your services with the employer terminated and you withdrew from the fund accordingly. You received a withdrawal benefit of R8 073.11 from the fund from which tax of R1 129.15 was deducted. Your net benefit was R6 943.90.

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

Complaint

- [4] Your complaint is that you should have received a benefit of at least R13 500 before tax.
- [5] You also contend that you were promised by your former employer that your period of service as a casual worker would be recognized as pensionable service for the purposes of calculating your pension benefit.

Fund's Response

- [6] ABSA Consultants and Actuaries (Pty) Ltd, the fund's administrator has responded on behalf of the fund.
- [7] The administrator states that the fund is a defined contribution fund and as such the benefit to which you became entitled was the sum of all member and net employer contributions together with investment returns thereon.
- [8] The administrator has provided a breakdown of how your benefit was calculated. The total member contributions were R5 706.61. The total employer contributions were R2 043.83 after a deduction for costs.
- [9] Regarding your contention that your period of service as a casual worker would be recognized, the administrator states that the fund is not aware of any such agreement.

Employer's response

- [10] The employer states that at no stage did the company give you an undertaking that your membership of the fund would be backdated to the date you commenced employment as a casual.

Determination and reasons therefor

- [11] Your rights are derived from the rules of the fund. Rule 9.1 was applicable to you and reads:

"CASH BENEFIT

If a MEMBER leaves service as a result of voluntary resignation, dismissal or having been declared redundant or having been retrenched, a lump sum benefit equal to the MEMBER'S EQUITABLE SHARE in the FUND at the date of termination of service shall be paid by the FUND, whereafter the former MEMBER shall have no further claim against the FUND."

- [12] "Equitable share" is defined in the rules as follows:

"EQUITABLE SHARE

In respect of any MEMBER, an amount equal to the total of the contributions to the FUND, by and on behalf of the MEMBER, adjusted on a basis deemed equitable by the ACTUARY, taking into account:

- the INTERIM INVESTMENT RETURN or INVESTMENT RETURN as applicable;
- the cost of management of the FUND; and
- surpluses or deficits that may arise in the FUND from time to time”

[13] In terms of the above, on your withdrawal from the fund you became entitled to the total contributions paid to the fund plus investment return plus any surpluses in the fund less management costs and any deficits in the fund.

[14] Rule 5.1.1 and rule 5.2.1 govern the member contribution rate and the employer contribution rate respectively. Rule 5.1.1 provides that a member shall contribute 7.5% of his monthly pensionable salary to the fund. Rule 5.2.1 states that the employer shall contribute 9.5% of a member’s pensionable salary less the cost of contributions made to the disability scheme, the funeral scheme and the cost of insuring the death benefits payable in terms of the rules.

[15] What is clear from the above is that not all contributions are applied to retirement savings. Therefore the benefit to which you became entitled cannot be calculated with reference to the total contributions paid. Various costs are deducted including the costs of risk cover and ongoing management costs of the fund. The figure of R13 500 which you have provided apparently fails to take this into account.

Employment as a casual worker

[16] Rule 4.1.1 sets out the eligibility requirements for membership of the fund. It reads as follows:

“Any person qualifies for membership of the FUND on the date on which the MEMBER becomes an EMPLOYEE; provided that the MEMBER has not yet attained the NORMAL RETIREMENT AGE as at such date and is not a member of another APPROVED FUND operated by the EMPLOYER.”

[17] The rules define an “employee” as follows:

“A person in the full-time permanent service of the EMPLOYER, who has been classified by the EMPLOYER as an operational C.I.T EMPLOYEE, and in respect of whom the EMPLOYER has notified the FUND as such in writing and who is not in receipt of benefits that are payable in accordance with the provision of these rules or the rules of the DISABILITY INCOME SCHEME”

