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Please quote our ref: PFA/FS/6338/05/NS

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 ("the Act") – MJ & B ZWANE ("the complainant") v CONSTRUCTION INDUSTRY RETIREMENT BENEFIT FUND ("the first respondent")/ NBC CONSULTANTS & ACTURIES ("the second respondent") & RAND ROADS (A DIVISION OF GRINAKER- LTA LIMITED) ("the third respondent")

1. Introduction

1.1 The complaint concerns the non-payment of a death benefit by the first respondent.

1.2 The complaint was received by this office on 11 November 2005. The complainants were requested to furnish additional information in order for this office to investigate their complaint. The complainants submitted this on 13 March 2006, and a letter acknowledging receipt thereof was sent to the complainants on 4 April 2006. On the same date a letter was dispatched to the third respondent requesting it to file a response to the complaint by no later than 25 April 2006. The response was received on 5 April 2006. A copy of the response was sent to the complainants on 21 April 2006. A reply was received from them on 15 May 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 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

1.3 After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

2. Complaint

2.1 The complainants are the parents of Thabo Andrias Zwane ("the deceased") who died on 16 February 2005. The complainants state that the deceased commenced service with the third respondent on 23 October 2000 and remained so employed until he died. The complainants state that the first respondent has failed to pay a death benefit to them upon the death of the deceased. They accordingly request this tribunal to investigate the matter and make an order for payment of the death benefit as a matter of urgency.

3. Response

3.1 The third respondent confirms that the deceased was employed by it on three different periods and at three different workplaces.

3.2 The first period was 23 October 2000 to 19 August 2003. The place of work was in Dabulantaba (Harrismith N3) and he was employed on a limited duration contract. The third respondent states that during this period, the deceased was a member of the first respondent by virtue of his employment. The third respondent states further that the rules of the first respondent allowed employees who were employed on a limited duration contract to be members of the first respondent after a waiting period of six months. During this period, the deceased was a contributing member of the first respondent. The third respondent states that the contract expired on 19 August 2003 and a withdrawal benefit was paid to the deceased on 8 December 2003. The third respondent has attached a copy of the letter from the second respondent confirming payment of the amount of R3508.97 directly into the deceased's bank account.

[5] On 20 August 2003 the deceased was re-employed on a contractual basis until 28 February 2004.The third respondent states that the deceased was not a contributing member to the first respondent during this period because the rules of the first respondent excluded employees who were employed on limited duration contract from becoming members of the first respondent. The employer states that this was due to a new rule which was applicable at the time. During this period, the deceased received no benefit from the first respondent, when his contract expired.

[6] On 1 March 2004 the deceased was re-employed on a limited duration contract until he died on 16 February 2005. The third respondent states

that he was not a member of the first respondent because he was not eligible in terms of the rules. It states that when the deceased died an amount of R2000.00 was paid to the family, which was intended as a contribution towards the funeral costs.

Determination and reasons therefor

[7] Section 13 of the Act states that the rules of a registered fund are binding on the fund's members, shareholders and officers thereof, and any person claiming under the rules, or whose claim is derived from a person so claiming. Furthermore, the trustees' powers are circumscribed by the rules of the fund (see *Tek Corporation Provident Fund and Others v Lorentz* [2002] 3 BPLR 227 (SCA) at 239 D-H).

[8] It is clear from the evidence before me that the deceased was a member of the first respondent during the period 23 October 2000 to 19 August 2003. It appears that upon termination of his employment on 19 August 2003, a benefit was subsequently paid out by the first respondent to the deceased. In terms of the rules an employee was defined to include an employee who had completed six months continuous service.

[8] It seems that during the periods 20 August 2003 to 28 February 2004 and 1 March 2004 to 16 February 2005 respectively, the deceased did not qualify to be a member of the first respondent in terms of the rules of the fund. It is also clear that the definition of an "Eligible Employee" in terms of the rules was amended to exclude employees employed on limited duration contracts from becoming members of the first respondent. In terms of the amended rules an "Eligible employee"

> "Means an employee who
>
> (a) is employed on a permanent staff of the employer; and
>
> (b) is under the age of 65 years; and
>
> (c) is not a member of a fund providing retirement benefits which was set up in terms of an agreement under the Labour Relations Act, 1956."

[8] It is common cause that the deceased was employed on a limited duration contract of employment during the two latter periods. It is evident from the rules of the first respondent that he was not eligible to join the first respondent. I am satisfied that the deceased received his benefits from the first respondent in 2003 and no further benefits are due to him or his beneficiaries in respect of the two latter periods in terms of the rules.

[9] In the result, your complaint is dismissed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR