



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House

Cnr 5<sup>th</sup> 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](mailto: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](mailto:enquiries@pfa.org.za)

Website: [www.pfa.org.za](http://www.pfa.org.za)

---

Please quote our reference: PFA/GA/6889/2006/FM

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”): W THUYNSMA (“the complainant”) v FORD MOTOR COMPANY OF SOUTHERN AFRICA PENSION FUND (“the first respondent”) / FORD MOTOR COMPANY OF SOUTHERN AFRICA (“the second respondent”) & ALEXANDER FORBES (“the third respondent”)**

1. Introduction

- 1.1 At issue in this complaint is the question whether the complainant is at law entitled to the payment of a retirement benefit by the first respondent at the time of his dismissal from the second respondent on 30 September 2003.
- 1.2 The complaint was received by this office on 3 December 2005 and a letter acknowledging receipt thereof was sent to the complainant on 2 February 2006. On the same date letters were dispatched to the respective respondents giving each until 23 February 2006 to file a response to the complaint. A response dated 22 February 2006 filed on behalf of the first respondent was received from Alexander Forbes Financial Services (“the third respondent”) on 23 February 2006. A response dated 23 February 2006 was received from the second respondent on the same date. On 2 March 2006 and on 11 December 2006 letters were addressed to the complainant requesting him to file a reply to the respective responses. A reply dated 12 December 2006 was received from the complainant on the same date.

---

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrobbree (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

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.

## 2. Facts in brief

2.1 During the tenure of the complainant's employment with the second respondent he was a member of the first respondent until his dismissal from employment on 30 September 2003. At the time of his dismissal he was 53 years of age and had 15 years' service with the second respondent.

2.2 Upon the complainant's dismissal, he instituted proceedings at Commission for Conciliation, Mediation and Arbitration (CCMA) challenging the fairness of such dismissal. There appears to have been some sort of agreement between the second respondent, the first respondent and the complainant that in the event of his successfully challenging the dismissal at the CCMA, the first respondent would pay the complainant an early retirement benefit in contradistinction to a withdrawal benefit which he would ordinarily have been entitled to in terms of the rules of the first respondent..

2.3 Pending the outcome of the CCMA proceedings, the complainant was provided by the third respondent, the administrator of the first respondent, with a quote wherein it was stated that the complainant's early retirement benefit would entitle him to a monthly pension of R4 365,31 in the event he does not commute one-third thereof for cash and that the capitalized value of his full pension amounted to R655 450,00.

2.4 During 2005 after the CCMA had ruled in favour of the second respondent in the dismissal dispute, the complainant was advised by the first respondent that he was, in terms of the rules, entitled to a withdrawal benefit in the amount of R186 817,00. Such contention by the first respondent now forms the subject-matter of this complaint.

## 3. Complaint

3.1 The complainant is aggrieved by the first respondent's averment that he was entitled to a withdrawal benefit as opposed to an early retirement benefit. The Complainant contends that during the proceedings at the CCMA, he was given an undertaking by one Zama Lamla, a then employee of the second respondent that he would be entitled to take an early retirement benefit.

3.2 The complainant now feels that the first respondent's failure and/or refusal to pay him an early retirement benefit is "unfair and unacceptable". In his own words, he states: "My question is, why holding me on a string stated that I could go on pension?... I strongly feel that I should be entitled to the

full capitalized amount from the pension fund to be re-invested in an annuity fund” (sic).

- 3.3 The complainant accordingly seeks that I order the first respondent to pay him a monthly pension or in the alternative pay him a capitalized value of his pension in the amount of R655 450,00.

4. Response

The fund

- 4.1 The first respondent in its response states that the complainant is, in terms of their rules, entitled to a withdrawal benefit not a retirement benefit. I am referred to rule 41(b) which provides thus:

**“41. RESIGNATION, DISMISSAL AND RETRENCHMENT**

(a)...

(b) A MEMBER who resigns voluntarily or is dismissed and has not attained the age of fifty-five (55) years shall be entitled to a lump sum equal to his ACCUMULATED CONTRIBUTIONS inclusive of interest as determined in the definition of ACCUMULATED CONTRIBUTIONS”.

- 4.2 “Accumulated contributions” are in turn defined as comprising the member’s first respondent’s contributions; the complainant’s contributions to any approved fund which on admission to the fund are deemed by the trustees to be his contributions to the first respondent; contributions made by a member to his former fund; additional voluntary contributions made by the member to the first respondent and interest on such contributions at a rate determined by the trustees in their sole discretion from time to time.
- 4.3 The first respondent then submits that it is clear from the wording of rule 41(b) that as at the date of dismissal, he was not entitled to an early retirement benefit as he had not yet attained the age of 55 years. According to the first respondent, the complainant was entitled to a withdrawal benefit which amounts to a lump sum equal to his accumulated contributions plus interest.
- 4.4 The first respondent further states that the complainant was, on 2 December 2005, advised by the third respondent that he was, in terms of the rules, only entitled to a withdrawal benefit of R186 817,40 in contradistinction to an early retirement benefit.
- 4.5 The first respondent accordingly seeks that I dismiss the complaint.

5. The employer



**MAMODUPI MOHLALA  
PENSION FUNDS ADJUDICATOR**