



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
P O 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

Please quote our reference: PFA/GA/3543/2005/SM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“THE ACT”) – J MAVUSO v NSA SECURITY SERVICES (PTY) LTD. AND PENPRO ADMINISTRATORS (PTY) LIMITED

Introduction

[1] The complaint concerns the quantum of the withdrawal benefit you received following the termination of your employment on 30 January 2004. It was received by this office on 27 May 2005. A letter acknowledging receipt thereof was sent to you on 28 June 2005. On 24 June 2005 letters were dispatched to NSA Security Services (Pty) Ltd (“the employer”) and Penpro Administrators (Pty) Ltd (“the administrator”) giving them until 15 July 2005 to file their responses to the complaint. Responses were received from the administrator on 1 July 2005, 10 August 2006 and 29 January 2007. Although a response was sought from the employer it failed to file a response to the complaint. On 27 July 2005 this office received your reply. Having considered the submissions before me, I find it unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, I shall only repeat those facts that are pertinent to the issues raised herein. My determination and reasons therefor appear below.

Factual Background

[2] You were employed by the employer as a security officer from 1 December 2000 until 30 January 2004 when your employment was terminated. You started paying contributions to the Security Employees National Provident Fund (“the fund”) from 1 December 2000 until you were

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

retrenched on 30 January 2004. You became entitled to receive a withdrawal benefit following the termination of your employment. The administrator paid you an amount of R275.77 on 23 February 2005 as your withdrawal benefit.

Complaint

- [3] Your complaint is that you are not satisfied with the amount of the withdrawal benefit that was paid to you. You stated that you have not been paid the full amount of the provident fund when your employment was terminated. Therefore, you requested this office to investigate the matter in order to find out if you were paid the full amount that is due to you.

Responses

- [4] This tribunal received responses from the administrator on 1 July 2005, 10 August 2006 and 29 January 2007. It was submitted that an amount of R275.77 was paid to you on 23 February 2005 as your withdrawal benefit. The employer provided the administrator with a schedule indicating that you paid contributions for three months which was accordingly paid out to you as your withdrawal benefit.
- [5] The administrator stated further that the employer terminated its membership with the fund on 31 May 2004. It also submitted that the employer's contribution which was included in your withdrawal benefit is less the costs of risk cover of the fund. It stated that any deductions that were made after the employer had terminated its membership to the fund should be followed up with the employer.

Determination and reasons therefor

- [6] Following the termination of your employment with the employer you became entitled to a withdrawal benefit. After claiming your withdrawal benefit, you received an amount of R275.77 from the administrator. The administrator indicated that this amount consisted of your three months contributions which you paid while you were employed. It also stated that the employer's contribution is less the costs of risk cover of the fund. The administrator only received contributions from you and the employer on 1 May 2003, 30 June 2003 and 31 July 2003.
- [7] According to a letter which is attached to a response from the administrator, you paid contributions in the sum of R74.88 on 31 May 2003, R28.80 on 30 June 2003 and R90.27 on 31 July 2003. The employer also paid contributions in the amounts of R21.19 on 31 May 2003, R3.54 on 30 June 2003 and R27.09 on 31 July 2003. It is indicated that the administrator did

not receive any contributions from you and from the employer from 1 April 2004 until 17 February 2005.

- [8] However, according to the pay slips you attached to your reply dated 27 July 2005, the employer deducted certain amounts from your salary until your employment was terminated on 30 January 2004. The amounts that were deducted by the employer from your salary amounted to R515.24. It is clear that this amount was not taken into account when your withdrawal benefit was paid to you. This is because the administrator received a schedule from the employer in which it indicated that you paid contributions for only three months and that the amount that was paid to you as your withdrawal benefit was for the period that you paid contributions.
- [9] It is evident that the employer deducted contributions for the provident fund from your salary in the amounts of R28.80 on 30 June 2003, R90.27 on 31 July 2003, R21.06 on 31 December 2003, R99.30 on 31 January 2004 and R275.81 on 31 January 2004. Therefore, it is clear that the employer failed to pay all your contributions to the administrator. It is also clear that the employer only paid its contributions to the administrators in May 2003, June 2003 and July 2003. It follows that the employer paid over contributions only for three months despite deducting same from your salary for about four months. As a result of the employer's conduct, the amount that was paid to you as your withdrawal benefit was much less than it ought to have been.
- [10] The employer's conduct is in contravention of section 13A of the Act and is a punishable offence in terms of section 37 of the Act. Section 13A of the Act provides that the employer of any member of a registered fund shall pay the following to the fund in full, namely:
- “(a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and
 - (b) any contribution for which the employer is liable in terms of those rules.”
- [11] Section 13A(3)(a)(i) also states that such contribution must be paid directly into the fund's account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable. If the employer fails to transmit contributions to the fund within the prescribed period, interest at the usury rate is payable thereon by the employer. Section 13A(7) provides that

interest at the rate prescribed by the Minister of Finance shall be payable on the amount of any contribution not transmitted by the employer or received by the fund before the expiration period prescribed therefore in section 13A(3)(a)(i) and (ii).

- [12] Upon the failure to pay contributions to the fund or administrator, the employer will not only be liable to pay interest on the arrear contributions but will also be guilty of an offence in terms of the Act. In this matter, the administrator only paid an amount of R275.77. In a defined contribution fund, the fund cannot be held liable to pay your full withdrawal benefit if it does not receive contributions on your behalf. It is evident that the employer did not pay over all your contributions to the fund. To the extent that the fund does not hold sufficient cash reserves to pay the benefit, you are entitled to recover the loss of your benefits from the employer (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839 F-G).
- [13] Thus, the appropriate relief is that which has the effect of placing you in the position you would have been had the employer regularly and timeously paid the contributions due. To that end, the administrator must calculate the benefit to which you would have been entitled had the employer made regular contributions less any deductions permitted by the Act. The employer must then be ordered to pay this amount together with interest calculated as envisaged in section 13A(7) of the Act.
- [14] I therefore make the following order:
- [14.1] The administrator is hereby ordered to calculate the total sum of all outstanding contributions due by the employer in respect of your membership and inform the employer and this office of the amount within 14 days of the date of this determination.
- [14.2] The administrator is further ordered to compute the value of your withdrawal benefit that you would have been entitled to had the employer timeously made the pension contributions due in terms of the rules, less amounts paid and less any deductions authorised in terms of the Act, within 14 days of this determination, and forward same to this office and to the employer.
- [14.3] The employer is directed to pay to you the amount of benefit computed in paragraph 14.2, by no later than Thursday, 1 March 2007, together with interest thereon calculated at 15.5% per annum from 27 May 2005 until date of payment.

[14.4] The employer is further directed to pay interest on the sum of all outstanding contributions as calculated in paragraph 14.1 at the rate of 20% per annum, directly to the fund within 7 days of receiving the calculations in paragraph 14.1.

DATED AT JOHANNESBURG ON THIS DAY OF 2007.

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR