



HEAD OFFICE
Johannesburg
2nd Floor, Sandown House
Sandton Close 2, Sandton, 2196
PO 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/NC/8025/2006/NVC

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): J P Smit (“the complainant”) v KLK Pension Fund (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the respondent’s refusal to allocate a portion of its surplus to the complainant.
- 1.2 The complaint was received on 4 April 2006 and a letter acknowledging receipt thereof was sent to the complainant on 21 April 2006. On the same date a letter was dispatched to the respondent requesting it to submit a response to the complaint by 12 May 2006. After requesting an extension, the response was received on 22 May 2006. The response was sent to the complainant on 25 May 2006 for a reply by 15 June 2006. The reply was received on 13 June 2006.
- 1.3 After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

2. Complaint

- 2.1 The complainant was a member of the respondent until 1995 when he

M Mohlala (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), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

elected to transfer to the KLK Provident Fund (“the provident fund”). In 1999 the respondent was changed from a defined benefit to a defined contribution fund, and at this time the respondent’s members’ benefits were enhanced by 20%. The complainant resigned from service in February 2005 and became entitled to a withdrawal benefit of R273 119.31. He elected to receive R50 000.00 in cash and transferred the balance to Sanlam Life Insurance Limited for investment in a retirement annuity.

- 2.2 He is dissatisfied that he did not receive a portion of the respondent’s surplus or an enhancement to his fund credit in 1999 when it changed to a defined contribution fund. He states that the surplus in the respondent had accumulated while he was a member of it up to 1995, and he is therefore also entitled to the 20% enhancement that the respondent’s members received. He feels discriminated against and that the respondent’s members received the enhancements at the cost of those members who elected to join the provident fund in 1995.

3. Response

- 3.1 According to the provident fund the complainant’s full actuarial reserve amounting to R63 130.97 was transferred from the respondent to the provident fund with effect from 1 December 1995. When the respondent changed to a defined contribution pension fund in 1999, he was therefore no longer a member of the respondent and not entitled to enhancements allocated to the respondent’s members. The provident fund states that the respondent’s members were compensated for the investment risk passing from the employer to the members.
- 3.2 The provident fund states that the complainant received his full benefit to which he was entitled to by virtue of his membership which included an enhancement when he transferred to it in 1995.

4. Determination and reasons therefor

- 4.1 On 23 October 1995 the complainant opted to join the provident fund, and he transferred to it in December 1995, at which time he ceased membership in the respondent and surrendered all further claims against it. He is not entitled to receive benefits from a fund to which he does not belong, unless he can establish that he did not receive the full benefit due to him in terms of the rules of that fund. I have examined the documents which have been submitted and it is apparent that the complainant’s full actuarial reserve was transferred on his behalf to the provident fund.
- 4.2 However, his complaint is directed against the respondent for not taking him into account when it granted enhancements in 1999 from its surplus which he contends he had contributed to up to 1995, impacting negatively

