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Please quote our ref: PFA/NW/3661/05/FM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): D MOENG (IN RE: M N MOENG) (“the complainant”) v LAFARGE SOUTH AFRICA EMPLOYEES’ PROVIDENT FUND (“the first respondent”)/ LAFARGE SOUTH AFRICA (PTY) LTD – CEMENT DIVISION (“the second respondent”)

1. Introduction

[1.1] At issue in this complaint is the complainant’s dissatisfaction with the delay in the payment and/or the non-payment of a benefit arising from the death of the complainant’s brother, the late Mr M N Moeng (henceforth referred to as “the deceased”) on 21 February 2006.

[1.2] The complaint was originally received from the deceased by this office on 24 May 2005. Subsequent to the deceased’s death and prior to the resolution of the original complaint, the complainant submitted an additional complaint on 3 March 2006 in which he raised issues arising from the original complainant’s death and requested the office to pursue its investigations. A letter acknowledging receipt of the complaint was sent to the complainant on 4 July 2006. On the same date a letter was addressed to the first respondent giving it until 25 July 2006 to file a response to the complainant’s complaint. A response dated 27 November 2006 was received from the first respondent on 1 December 2006. On 6 December 2006 a letter was dispatched to the complainant requesting him to file a reply to the first respondent’s response by no later than 20 December 2006. No reply was received from the complainant. Having considered the written submissions filed, it is considered unnecessary to hold a hearing. The determination and reasons therefor appear below.

[1.3] Save for setting out only those essential facts that are pertinent to the

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

issues raised herein, the tribunal shall not burden this determination by repeating the background facts save where it is necessary for purposes of this determination.

2. The facts

- [2.1] The complainant is a brother to the deceased. The first respondent is a pension fund organisation as defined in section 1 of the Act. The second respondent is a company incorporated according to the company laws of the Republic of South Africa.
- [2.2] The history to this complaint is that the deceased was a member of the first respondent from April 1996 to 31 January 2006 whilst in the employ of the second respondent. During July 2004 the deceased was declared disabled by the insurer underwriting the disability benefits for employees of the second respondent and members of the first respondent and a monthly temporary disability benefit was payable to the deceased by the insurer until October 2005. On 31 January 2006 the insurer declared the deceased, after medical assessments, to be totally and permanently disabled. Before payment of the disability benefit was effected to the deceased, the deceased passed away on 21 February 2006.
- [2.3] The complainant then lodged this complaint, lamenting, among other things, the delay in the payment of the benefits resulting from the demise of the deceased.
- [2.4] Such delay in the payment and/or the non-payment of the death benefits, as alleged by the complainant, now forms the subject matter of this complaint.

3. Complaint

- [3.1] Although the complaint is not formulated in precise terms, the complainant appears to be perturbed at the delay in the payment of the benefit arising from the death of his brother. In his own words, the complainant puts his averment in the following terms: "I have received nothing to the company of my brother... Problem is that my brother passaway on 21 February 2006, Lafarge Company did nothing to buried him. Insurance deduction R667.90... Please help me with his provident fund" (sic).
- [3.2] The adjudicator is sought to investigate this matter.

4. Response

- [4.1] A response, apparently bearing the signature of the principal officer of the first respondent, was received under cover of a letter from Alexander

- Forbes Financial Services, an administrator of pension funds approved as such by the Registrar of Pension Funds in terms of section 13B of the Act and which administers the first respondent.
- [4.2] In the first instance, the first respondent raised a procedural point to the effect that this tribunal has no jurisdiction to investigate and adjudicate upon this complaint. The reasons advanced for this contention are that the first respondent offers risk benefits as a rider benefit and not disability benefits. Such benefits (disability income and permanent disability benefit) are offered, by way of a separate disability insurance policy entered into between the second respondent and the insurer underwriting the benefits for the benefit of the employees of the second respondent who are members of the first respondent.
- [4.3] It is submitted that the first respondent does not exercise any discretion pertaining to the payment of such disability benefits provided in terms of the insurance policy; that the first respondent is not a party to such a policy and further that the first respondent does not determine the benefits to be provided by the insurer in terms of the insurance policy but that the insurer exercises its discretion over the quantum of the benefits payable. In light of these submissions, the first respondent further submits, the adjudicator lacks jurisdiction to hear the complaint.
- [4.4] As regards the complainant's complaint about the delay in the payment of the benefits resulting from the deceased's death, the first respondent avers that the deceased's membership of the first respondent terminated on 31 January 2006 when the deceased was declared by the insurer as being totally and permanently disabled. By way of an explanation, the first respondent states that when it received confirmation that the deceased's claim for total and permanent disability was admitted by the insurer, the second respondent gave notice to the first respondent of the deceased's retirement from the first respondent as a result of ill-health.
- [4.5] On this basis, the first respondent argues that when the deceased passed away on 21 February 2006, the deceased was no longer a member of the first respondent as he had retired there from on 31 January 2006 when he was declared by the insurer to be totally and permanently disabled and hence no benefits are payable by the first respondent as a result of his death for the simple reason that he was not a member of the first respondent at the time of his death.
- [4.6] With regard to the benefits for total and permanent disability payable by the insurer which were about to be paid to the deceased at the time of his death, it is stated that Alexander Forbes, in its capacity as the administrator has been liaising with the deceased's spouse with respect to the payment of the benefit into the deceased estate. It is further stated that

the administrator and the second respondent have taken all the necessary steps to assist the deceased's spouse in making the necessary application to be appointed as the executrix of the deceased estate and once such appointment has been made, it is further stated, such disability benefits will then be paid into the deceased estate.

- [4.7] The first respondent seeks the adjudicator to dismiss the complaint, *inter alia*, on the grounds that the first respondent's obligations to the deceased in respect of paying benefits in accordance with the rules was discharged when the deceased's claim for disability benefits was admitted by the insurer and further that any benefit due and payable to the deceased's estate is now due and payable in terms of the policy of insurance in contradistinction to being payable by the first respondent.

5. Determination and reasons therefor

Point in limine

- [5.1] Although it seems to me that the payment or otherwise of disability benefits is not what is placed in issue by the complainant in this case, I shall, in any event, also deal with this aspect in the determination.
- [5.2] It is the view of this tribunal that the technical point relating to the jurisdiction of the adjudicator raised by the first respondent is dispositive of this part of the complaint relating to the payment of disability benefits, for the reasons set out in the succeeding paragraphs.
- [5.3] The purpose of this office is to dispose of complaints lodged by complainants against their respective pension funds and employers who participate in the funds. A fund is defined as a pension fund organization which is further defined in section 1 of the Act as follows:

- “(a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members or former members; or
- (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established when they reach their retirement dates or for dependants of such persons upon the death of those persons, and includes any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) or (b) also carries on business in connection with any of the objects for which a friendly society may be established as specified in section 2 of the Friendly Society's Act, 1956, or which is or may become liable for the payment of any benefits provided for in terms of the rules whether or not it continues to admit or to collect contributions from or on behalf of members”.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR