



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR
(HELD IN CAPE TOWN)**

CASE NO: PFA/WE/6844/06/NS

In the complaint between:

S A DAVIDS

Complainant

and

THE METAL BOX SA PROVIDENT FUND

First Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE
PENSION FUNDS ACT 24 OF 1956 (“the Act”)**

1. Introduction

1.1 The complaint concerns the calculation of the complaint's withdrawal benefit, in particular, the calculation of the interest portion of the fund credit.

1.2 The complaint was received on 17 January 2006 and a letter acknowledging receipt thereof was sent to the complainant on 24 January 2006. On the same date a letter was dispatched to the respondent requesting it to submit a response to the complaint by 14 February 2006. The response was received on 14 February 2006 and a copy of same was sent to the complainant. A reply was received on 4 April 2006. Further information was also obtained from the respondent in relation to specific questions put by this office.

1.3 After considering the written submissions before me, I find it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

2. Complaint

2.1 The complainant commenced service with Metal Box SA Limited on 1 February 1989. He became a member of the fund by virtue of his employment with effect from 1 May 1992 until he resigned on

30 June 2004. Upon termination of service, the complainant received a benefit of R75 585.85 from the fund.

2.2 The complainant is not happy with the benefit that he received and contends that his benefit does not include the applicable rates of declared interest for the financial years 2003 to 2004 (12%) and 2004 to 2005 (18%) respectively. He also claims that contributions to the value of approximately R6 262.00 were not credited to his fund's share for the period 1 March 2004 to 25 June 2004. In support of his allegation, the complainant states that he received no statements from the fund with regard to these contributions.

3. The response

3.1 The fund states that the fund employs a system of interim and final interest rates. This method is implemented on the advice of the Actuary to the fund. According to the fund, once the interest rate is declared, it is applied to the fund credits of all members who were in the fund for a period of 12 months up to the financial year end of declaration. Any contributions that were not in the fund for a full 12 month period would not earn the full interest rate, but would earn a proportionate interest rate only. The system therefore operates on the assumption that a member's full yearly contributions must have been in the fund in order to earn the full rate.

- 3.2 The fund advises that the financial year-end in respect of this fund is February each year. The fund states further that the declared interest and the interim interest rates were 0% in the 2002 to 2003 financial year. The fund has annexed a copy of an extract of the minutes of the trustees' meeting which was held on 8 August 2003 in confirmation of the above.
- 3.3 With regard to the 2003 to 2004 financial year, the declared interest rate was 12% and the interim interest rate was 4% (which was later adjusted to 8%). The fund has attached copies of the extracts of the minutes of the trustees' meetings that were held on 20 August 2004 and 12 November 2004 respectively, in support of the above. According to the fund the declared interest rate was 12% and interim interest rate was 6% for the 2004 to 2005 financial year. A copy of the extracts of the minutes of the trustees' meeting which was held on 18 August 2005 has been attached as proof thereof.
- 3.4 The fund states that the complainant withdrew from the fund with effect from 30 June 2004. It states that his fund credit and the aggregate of his previous 12 months' contributions were in the fund as at the end of February 2004. It states that these were automatically adjusted with the 12% declared interest rate. The fund submits that since the complainant withdrew from the fund on 30 June 2004, the 12% declared interest rate was not applied to the 4 months' contributions that were received by the fund after the end of its financial year in February since those contributions

were practically not in the fund in that financial year. With regard to those contributions, the interim interest rate of 0%, which was declared in the 2003 financial year, was applied.

- 3.5 The fund states that the complainant's benefit was calculated in terms of rule 7 of the fund's rules. According to the fund, members who are exiting the fund are paid their full fund credits. It states that the complainant's benefit was paid twice. The first payment was made on 28 July 2004 as follows:

“Gross Benefit	R230 678.91
Less Income Tax	R 34 012.10
Less housing loan settlement	R121 080.86
Total	R 75 585.85”

- 3.6 The fund states that on 12 November 2004 the trustees held a meeting, in which they performed a quarterly financial review of the fund, it was resolved to increase the interim interest rate from 4% to 8% with retrospective effect based on the recommendations of the fund's actuary. It states that this meant that all members who withdrew from the fund from 1 March 2004 would have been paid on the basis of 8% interim interest rate. Pursuant to the above, the complainant's benefit was reviewed in 2005. According to the fund, the 4 months' contributions for the period 1 March 2004 to 30 June 2004 were adjusted to the 8% interim interest rate determined in the financial year of 2003 to 2004. The fund states that this resulted in an increased benefit as follows:

“Gross Benefit	R236 570.99
Less Income Tax	R 41 428.04
Less housing loan settlement	R121 080.86
Total	R 75 585.85”

3.7 The fund states that inasmuch as the benefit increased by R5 892.18, the income tax liability on the entire benefit also increased by R7 415.94. It states that it paid the difference to the South African Revenue Services and confirms that this amount fell short by R1 523.76.

3.8 The fund dismisses the complainant’s claim that contributions for the period 1 March 2004 to 1 June 2004 were not credited to his fund share as incorrect. It states that all contributions received by the fund are credited to the member’s fund credit immediately after they have been deposited into the fund’s bank account and when the fund receives the contribution schedules from the employer. The fund states that the complainant was paid his full benefit which includes his own contributions plus 100% of the employer’s contributions calculated at the date of his withdrawal.

4. Determination and reasons therefor

Accrual of the benefit

4.1 Rule 7.1 read in conjunction with rule 7.2.1 provides for the

payment of a withdrawal benefit to a member who leaves the services of his employer. In this regard Rule 7.1 states as follows:

“Benefit

If a Member who is not qualified to retire in terms of Rule 5 leaves Service for any reason, he will become entitled to a lump sum benefit equal to his Fund Credit.”

4.2 Rule 7.2 .1 reads as follows:

“The benefit in terms of this Rule will be paid to the Member as a lump sum. Payment will be made as soon as possible after the date of his leaving Service.”

4.3 Therefore the complainant was entitled to his fund credit which is defined as a combination of the member’s portion and employer’s portion.

4.4 Member’s portion is defined as:

“In relation to each Member at any particular date the accumulated value of

- (a) his contributions made in terms of Rule 4.1 and (if applicable) transferred to the Fund in terms of Rule 9.1.1;

and

(b) the Member's Transfer Credit (if any);

together with interest thereon at a rate declared by the Trustees on the advice of the Actuary.”

4.5 Employer's portion is defined as:

“In relation to a Member at any particular date the accumulated value of

(a) the contributions made by the Employer in respect of the Member in terms of Rule 4.2.1; and

(b) the Employer's Transfer Credit (if any);

together with interest thereon at the same rate as that applied to the Member's Portion.”

4.6 It is common cause that the complainant resigned from service with effect from 30 June 2004. In the circumstances, that is the date on which his benefit accrued, which is also the relevant date insofar as the calculation of the benefit is concerned. (See *Sanlam Retirement Fund A (Office Staff) and Another v Pension Funds Adjudicator and Another* [2004] 6 BPLR 5790 (C) at 5795D to 5796A.)

Retrospective application of revised declared interest and interim interest rates

- 4.7 The declared interest rate of 12% and the interim interest rate of 4% (which was later adjusted to 8% on 12 November 2004) for 2003 to 2004 respectively were declared on 20 August 2004 after the complainant's benefit accrued to him. For this reason, the revised rates of declared interest and the interim interest cannot apply to the calculation of the complainant's withdrawal benefit because he withdrew from the fund when both rates were 0%. (See *Ntshiliza v ICS Provident Fund* [2000] 10 BPLR 1146 (PFA), at 1153B-H.)
- 4.8 Insofar as the retrospective adjustment of rates is concerned, a distinction needs to be drawn between ongoing members of the fund and exiting members of the fund. The rights of current members are contingent upon the happening of a particular event be it withdrawal or retirement. In the case of exiting members that event has already occurred and their rights to payment of the benefit have already vested (see *Ntshiliza* at 1153D-G). The effect is that the retrospective declaration of declared interest rates (whether more or less than the interim interest rate) does not influence the calculation of the benefits which have already accrued because the benefits must be calculated with reference to the interim interest rate which was applicable at the date of accrual.

- 4.9 In *casu*, it is clear that the declared interest rate of 12% and interim interest rate of 8% which were declared on 20 August 2004 and 12 November 2004 were applied in the calculation of the complainant's benefit. In the circumstances, the complainant was not entitled to the aforesaid interest, and is not entitled to any additional interest.

Non payment of contributions

- 4.10 There is no merit in this aspect of the complaint. The fact that no statement was provided to the complainant does not in itself indicate that these contributions were not credited to the complainant's fund share. Rule 7.1 referred to above stipulates that a member who leaves the service of his employer will be entitled to a lump sum benefit equal to his fund credit. The fund credit is defined in terms of the rules as a combination of the member's portion and employer's portion. It is clear from the letter dated 10 August 2005 which was addressed to the complainant's employer that his benefit included his member's portion as well as 100% of his employer's portion.
- 4.11 The complainant does not rely on any other information that suggests otherwise, and has therefore failed to discharge the onus of proof.
- 4.12 In light of the above, I am satisfied that the benefit that was paid to the complainant also included the contributions for the period 1

March 2004 to 25 June 2004.

5. Relief

5.1 The complaint is dismissed.

Dated at Cape Town on this the day of 2008.

Yours faithfully

MAMODUPI MOHLALA
Pension Funds Adjudicator