



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](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/4069/2005/SM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – J MASILELA (“the complainant”) v FEDSURE STAFF PENSION FUND (“the first respondent”), INVESTEC EMPLOYEE BENEFITS (“the second respondent”) AND LIBERTY GROUP LIMITED (“the third respondent”)**

1. Introduction

- [1.1] The complaint concerns the quantum of the withdrawal benefit the complainant received from the first respondent following the termination of his employment on 7 December 1999.
- [1.2] The complaint was received by this office on 26 August 2005. A letter acknowledging receipt thereof was sent to the complainant on 19 September 2005. On the same date a letter was dispatched to the second respondent giving it until 10 October 2005 to file its response to the complaint. Another letter was dispatched to the third respondent on 23 November 2005 giving it until 14 December 2005 to file a response to the complaint.
- [1.3] Responses were received from the third respondent on 22 December 2005 and 7 February 2007. Although a response was sought from the second respondent it failed to file a response to the complaint. These responses were forwarded to the complainant on 14 February 2006, in the event that he wished to make any further submission. The complainant omitted to file any further submissions.
- [1.4] Having considered the written submissions before this tribunal, it is

---

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

## 2. Factual Background

- [2.1] The complainant was employed by the former Fedsure Life Assurance Ltd (“the employer”) as a filing clerk from 1 July 1984 until 7 December 1999 when his employment was terminated. The employer was taken over by the second respondent. The complainant was a member of the first respondent by virtue of his employment until his employment was terminated.
- [2.2] Upon the termination of his employment, the complainant became entitled to receive a withdrawal benefit from the first respondent. The first respondent paid the complainant an amount of R31 436.54 as his withdrawal benefit.

## 3. Complaint

- [3.1] The complaint is that the complainant is not satisfied with the amount of the withdrawal benefit that was paid to him. The complainant contends that his withdrawal benefit consisted only of his contributions to the first respondent and that it did not include the employer’s contributions.
- [3.2] Therefore, the complainant requests this tribunal to investigate this matter and reverse the trustees’ decision regarding the amount of his withdrawal benefit.

## 4. Response

- [4.1] Mr R Gultig, the team leader (scheme financials) of the third respondent, filed a response on behalf of the first and the third respondents. He submitted that two payments amounting to R31 436.54 were paid to the complainant as his withdrawal benefit. He indicated that an amount of R16 000.00 was deducted from the complainant’s withdrawal benefit in favour of Saambou in order to settle his outstanding home loan. He also indicated that a further amount of R7 320.22 in respect of tax was deducted from the remaining amount of R15 436.54 and the balance was paid to the complainant.
- [4.2] Further, he pointed out that the first respondent in this matter is a defined benefit fund and that unlike a defined contribution fund, the end benefit is expressed as a percentage of the complainant’s salary. He indicated that a member will upon exiting the fund be entitled to a benefit equal to his

final annual salary multiplied by a number of years worked and multiplied by a factor of 2%. He submitted that a member contributes to the fund as a percentage stated in the rules and the employer pays the balance of the cost of the benefits, in the event that it may be necessary to do so, in terms of the rules.

- [4.3] He further stated that the complainant's contributions were sufficient to cover his capital value hence no employer's contributions were included in his withdrawal benefit. Further, he pointed out that a defined contribution fund works differently from a defined benefit fund. He indicated that in the case of a defined contribution fund the member's and employer's contributions are fixed and they are stated in the rules of the fund. He submitted that in a defined contribution fund the law allows for the member's and employer's contributions to be paid out to a member when he leaves the service of his employer, which is in contradistinction to a defined benefit fund.
- [4.4] Further, he submitted that the first respondent's actuary has received the complainant's personal details and that he will be able to share in the surplus apportionment scheme in the fund. Moreover, he indicated that the withdrawal benefit that was paid to the complainant included his contributions plus interest.

#### 5. Determination and reasons therefor

- [5.1] The complaint in essence is that the withdrawal benefit that was paid to the complainant was not correct as it did not include the employer's contributions. The payment of a withdrawal benefit is regulated by the rules of the fund. Rule 7.1.1 of the first respondent's rules states that:

"If a MEMBER leaves service prior to his NORMAL RETIREMENT DATE and is not entitled to benefits under any other RULE, an amount equal to the MEMBER'S accumulated contributions together with compound interest of:

In respect of contributions prior to 1 October 1994

6% pa on contributions made up to 30 September 1994, and 8% pa thereafter

In respect of contributions made from 1 October 1994

8% per annum

Plus

Any additional contributions made by, on behalf of, or for the benefit of the MEMBER as well as any amount transferred to the SCHEME for the benefit of

the MEMBER from another approved fund, together with such interest and vesting bonuses as shall accrue thereto in terms of the underlying policy if the contribution is not applied to purchase past service, or if applied to purchase past service, increased as set out above.”

- [5.2] According to Rule 4.2.1 of the first respondent’s rules, the employer shall contribute to the scheme each month at a rate recommended by the actuary, and agreed with the board, to provide the balance of the cost of providing the retirement and other benefits in terms of the rules, and will in addition pay for any service or other charge levied in terms of the underlying policy.
- [5.3] It is clear that the fund in this matter is a defined benefit fund. Therefore, the withdrawal benefit that is payable to the complainant is based on his salary, years of pensionable service and interest as set out in Rule 7.1.1 of the first respondent’s rules. As stated in *Adams v African Oxygen Limited Pension Fund and Another* [2003] 7 BPLR 4882 (PFA) at paragraph 23, in a defined benefit fund such as the one *in casu*, the member is entitled to a benefit computed in terms of specific formula based on pensionable emoluments and years of pensionable service. Therefore, the member is essentially entitled to a guaranteed benefit as outlined in the formula regardless of the market performance of the assets of the fund. It follows that the employer does not have to increase the complainant’s withdrawal benefit if he has received the amount that is due to him in terms of the fund’s rules.
- [5.4] The complainant’s withdrawal benefit amounted to R31 436.54 from which an amount of R16 000.00 was deducted for the payment of his home loan as well as R7 320.22 in respect of tax. It is evident that the complainant’s withdrawal benefit included his contributions to the first respondent as well as interest as prescribed in terms of Rule 7.1.1. The respondents indicated that the complainant’s contributions were sufficient to cover his capital value hence the employer’s contributions were not included in his withdrawal benefit. Further, it indicated that depending on one’s age if a member’s own contribution is enough to fund the calculated benefit at retirement, the employer would not be contributing to the benefit.
- [5.5] It is evident that Rule 4.2.1 of the first respondent’s rules limits the employer’s liability to the balance of the cost of providing the retirement and other benefits in terms of the rules. There was no shortfall in the amount of the withdrawal benefit that was paid to the complainant, thus there was no need for the employer to add its contribution in this regard.

Further, the exclusion of the employer's contributions did not affect the amount that was due to the complainant in terms of the first respondent's rules. In terms of Rule 4.2.1 the employer was not required to contribute at any rate specified in the fund's rules, but rather at a fluctuating rate determined by the actuary to provide for the balance of the cost of providing benefits in terms of the rules. As is the nature of a defined benefit fund, the contributions are not related to the provision of benefits and thus, even if the employer had contributed at a higher or lower rate, this would not necessarily affect the capital amount that is payable to the complainant in terms of the fund's rules (see *February v Peninsula Beverage Pension Fund and Others* [2004] 8 BPLR 5925 (PFA) at paragraph 13).

[5.6] Therefore, this tribunal is satisfied that the amount of the withdrawal benefit that was paid to the complainant represents his correct benefit that is due to him in terms of the first respondent's rules.

[5.7] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS                      DAY OF                      2008.

Yours faithfully

---

**MAMODUPI MOHLALA**  
PENSION FUNDS ADJUDICATOR