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Please quote our reference: PFA/NC/10333/2006/MQ

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): E DIRKSE (“the complainant”) v O’OKIEP COPPER COMPANY GROUP PENSION FUND (“first respondent”) / LIFE ASSURANCE FUND (“second respondent”)

1. Introduction

- 1.1 The complaint concerns the calculation of a withdrawal benefit.
- 1.2 The complaint was received by this office on 25 August 2006. A letter acknowledging receipt thereof was sent to the complainant on the 11 October 2006. On the same day a letter was dispatched to the respondent giving it until 13 November 2006 to file its response to the complaint. On 09 November 2006 a response was received from the respondent. The response was forwarded to the complainant on 01 February 2007. A reply was received from the complainant on 06 February.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing. The determination and reason therefor appears below.

2. Factual Background

- 2.1 The complainant became a member of the respondent by virtue of his employment with O’ Okiep Copper Company (Pty) Ltd, until March 1985 when he was dismissed and ceased to be a member. A withdrawal benefit was paid to the complainant in April 1985.

M Mohlala (Adjudicator), C Nkuhlu (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), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

3. Complaint

- 3.1 The complainant alleges that he was poorly remunerated and unfairly dismissed from service in 1985 by the employer.
- 3.2 The complainant is also unhappy with the benefit he received from the respondent. The complainant alleges that he is entitled to receive R3.5 million rand in respect of unpaid pension for 24 years calculated till 1985 and loss of pension income for the period 1985 to 1995.

4. The Respondent's Response

- 4.1 The respondent submits that it cannot be held responsible for the dismissal of an employee by the employer. The respondent further states that the fund is under the control of the trustees, and not the employer. Accordingly, they cannot comment on whether the complainant was dismissed fairly or not.
- 4.2 The respondent contends that the complainant was paid his correct benefit in terms of the registered rules, and argues further that the amount of time since the date of payment of the benefit and this complaint is indicative of the fact that the complainant accepted the amount at the time payment was made.

5. Determination and reasons thereof

Labour issues

- 5.1 The inquiry into whether the complainant was dismissed fairly or not and the issues of not being properly remunerated, are in my view labour related issues over which this Tribunal has no jurisdiction to investigate and adjudicate. In terms of section 1 of the Act, any complaint lodged with this office must relate to one of the three aspects of a pension fund organization, namely, the administration of the fund, or the investment of its funds or the interpretation and application of its rules (see *Armaments Development and Production Corporation of South Africa Ltd v Murphy No and Others* [1999] 11 BPLR 227 (C)). We therefore advise the complainant to refer this complaint to the relevant labour dispute resolution forum namely the Commission, for Conciliation Mediation and Arbitration.

Time Barring

5.2 Section 30I of the Pension Funds Act imposes certain time limits with regard to lodging of complaints before the Adjudicator and states as follows:

- “(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.
- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
- (3) The Adjudicator may on good cause shown or of his or her own motion –
 - (a) Either before or after expiry of any period prescribed by this Chapter, extend such period;
 - (b) Condone non compliance with any time limit prescribed by this Chapter.

5.3 The date of accrual of the complainant’s benefit was in 1985. Even though this tribunal had not yet come into existence at that time (as it was established in 1996 and became operational in 1998), the complaint was lodged on 25 August 2006, ten years after the establishment of this office.

5.4 There is good reason for a limit to be imposed on the time during which litigation may be launched and the Constitutional Court has pronounced on this. In *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) the Court said (at paragraph [11]):

“Rules that limit the time within which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigation damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can be obtained have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They serve a purpose to which no exception in principle can cogently be taken.”

5.5 However, that the complainant has become time-barred in terms of section 30I of the Act is not the end of the matter as I still have a discretion to extend the “three-year” time period or to condone non-compliance therewith. But there must be good cause to enable me to do that.

5.6 The Supreme Court of Appeal (or Appellate Division as it was then known) has pronounced upon the standard that must be met for condonation to be granted in circumstances like these. In *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) the court said (at 532B-E):

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has discretion, to be exercised judicially upon a consideration of all facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant is the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individual decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that is there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for long delay. And the respondent’s interest in finality must be overlooked.”

- 5.7 It is clear that 21 years have elapsed since the complainant’s contract of employment was terminated before the complainant lodged the complaint with this office. This, in my view, is an extraordinary long delay. Nor has the complainant provided reasons for the delay to support the condonation of his non-compliance with the time limits set out in the Act.
- 5.8 Regarding the prospects of success on the merits, the respondent states that the benefit was calculated and paid correctly in terms of the rules of the fund. Moreover, the complainant wants to claim some R3.5 million in pension fund benefits for the periods after his employment was terminated, this is impossible since he was not a member of the fund, nor did he contribute to it after the termination of his employment.
- 5.9 Taking the above factors into account, I find that no good cause exists for me to condone the non-compliance with the time limit as prescribed in the section. This aspect of your complaint therefore cannot succeed.

6. Relief

- 6.1 In the result the complaint is dismissed.

DATED at JOHANNESBURG on this day of 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR

Cc: O' Okiep Copper Company Group Pension Funds

Registered address of the fund

P O Box 2814
 Saxonworld
 2132

Section 30M Filing: Magistrate's Court

Please quote our ref: PFA/GA/22371/2008/LL

Ms E Swart

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 Terenure
 1619
 mail:Erika.swart@spar.co.za

Registered mail

E-

Dear Madam.

Re: COMPLAINT IN TERMS OF SECTION 30A OF THE PENSION FUNDS ACT 24 OF 1956("the Act"): E SWART ("the complainant") v SANLAM LIFE INSURANCE LIMITED ("the respondent")

1. **Introduction.**

1.1. This complaint concerns the complainant's dissatisfaction regarding the alleged poor investment returns that were achieved on her endowment policy investment.

1.2. The complaint was received by this office on 10 January 2008. A letter of acknowledgement was sent to the complainant on 20 February 2008 and on the same date, a letter was dispatched to the respondent it until 20 March 2008 to respond to the complainant's complaint. The respondent's response was received on 16 May 2008. The respondent copied the response to the complainant.

1.3 The respondent advised that the complaint concerned an endowment policy, therefore this office does not have jurisdiction to adjudicate the complaint. The complainant's policy documents confirmed that this was an endowment policy. In terms of the definition of a "complaint" in section 1 of the Act, this tribunal can only

investigate complaints relating to pension fund organizations. An endowment policy is an insurance product not a pension fund related benefit. Therefore, this tribunal lacks jurisdiction in this complaint. The complainant is referred to the Ombudsman for Long-term Insurance whose details appear below.

1.4 In the result, this tribunal lacks jurisdiction in this complaint and advises that its file is hereby closed.

DATED AT JOHANNESBURG ON THIS THE DAY OF 2008

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR