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Please quote our reference: PFA/KZN/8605/2006/NS

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): FDG JOSEPH (“the complainant”) v AMREL PROVIDENT FUND (“the first respondent”) and SACCAWU NATIONAL PROVIDENT FUND (UNDER CURATORSHIP) (“the second respondent”)

1. Introduction

- 1.1 The complaint concerns the non-payment of the complainant’s benefit by the respondents.
- 1.2 The complaint was received by this office on 15 May 2006. A letter acknowledging receipt thereof was sent to the complainant on 14 June 2006. On the same date a letter was dispatched to the first respondent requesting it to file a response to the complaint by no later than 5 July 2006. The responses were received from both respondents on 21 July 2006 and 24 July 2006 respectively. Copies of the responses were forwarded to the complainant on 25 July 2006. A reply was received from the complainant on 4 August 2006.
- 1.3 After reviewing the written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

2. Factual background

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

- 2.1 The complainant commenced service with Relyant Retail Limited (“the employer”) on 25 August 1986. He became a member of the Amrel Pension Fund on 1 September 1986 by virtue of his employment. It appears that the complainant’s benefit was transferred from the Amrel Pension Fund to the first respondent on 1 December 1995 in terms of section 14 of the Act.
- 2.2 Subsequently, the complainant elected to transfer his benefit from the first respondent to the second respondent in December 2001. That transfer has not yet been effected. However, in anticipation thereof, it appears that the complainant became a member of the second respondent with effect from 1 July 2000, and all contributions were paid to the second respondent from that date. On 28 May 2002 his employment was terminated as a result of disability. The complainant is in receipt of a monthly disability benefit from SACCAWU Permanent Health Insurance, which is a separate income continuation scheme and not a pension fund organization. The complainant continues to pay a monthly contribution of R245.00 to the second respondent.
- 2.3 The complainant’s initial complaint was concerned with the location of his benefit. Subsequent to the responses of both respondents, it seems that this aspect of his complaint has now been resolved. It appears therefore that the complainant is a member of both funds to the extent that he has not received his benefits.
- 2.4 On 1 October 2007 a special letter was addressed by this tribunal to both respondents requesting reasons why the complainant’s benefits have not been paid out since his employment was terminated in 2002. Only the first respondent replied.

3. Complaint

- 3.1 In his reply, the complainant requests the respondents to pay his benefits.

4. First Respondent’s Response

- 4.1 The first respondent states that it was not advised of the complainant’s termination of service. As such, the respondent submits that the complainant is deemed to be a member of the fund and is precluded from receiving his benefit.

- 4.2 The first respondent asserts that if the complainant had left service and become entitled to his benefit he would have been required to complete a claim form in which he would indicate whether he wished to receive his benefit in cash. It records that if the complainant has chosen the above option he would be required to provide it with his bank account details together with his tax number. Furthermore, his employer would indicate the reason for termination of his employment since it is relevant for tax purposes.
- 4.3 The first respondent confirms that the complainant is no longer contributing to it and has not contributed since joining the second respondent.
- 4.4 It concludes that it has no objection in paying the benefit to the complainant or in accordance with his instructions provided that the necessary claim forms are submitted and his claim is valid in terms of its rules.

5. Determination and reasons therefor

Benefit held by the first respondent

- 5.1 It is common cause that the complainant did not receive his benefit when his employment was terminated. Subsequent to the lodgment of this complaint and further investigation conducted by this tribunal, the first respondent has acknowledged liability for the payment of the complainant's benefit. It seems that such payment will be made once all the requirements which are necessary for processing the payment of a benefit have been met.
- 5.2 It follows therefore that the appropriate order is to direct the complainant to submit all the outstanding documents together with a withdrawal claim form duly completed and signed by him to the first respondent. Likewise, the first respondent will be ordered to compute and pay to the complainant the benefit to which he is entitled.

Benefit held by the second respondent

- 5.3 Concerning the benefit held by the second respondent, it should be noted that the fund in question was placed under provisional curatorship on 10 September 2002, which was finally confirmed on 18 March 2003. It remains under the curatorship of Mr A.L. Mostert, who was appointed by

the Pretoria High Court. Paragraph 7 of the court order placing it under curatorship reads as follows:

“A rule nisi do hereby issue calling upon all interested parties to show cause to this Honourable Court on 15 October 2002 at 10:00 why an order should not be granted that, whilst the curatorship exists, all actions, proceedings, the execution of writs, summonses and other processes against the Fund be stayed and not instituted or proceeded with without the leave of the Court.”

5.4 Paragraph 7 was confirmed in the court order of 18 March 2003 and must be read in conjunction with section 30O of the Act. The consequence of section 30O is that my determinations have the power of a High Court order and may be executed on. Section 30O provides as follows:

- (1) Any determination of the Adjudicator shall be deemed to be a civil judgment of any court of law had the matter in question been heard by such court, and shall be so noted by the clerk or the registrar of the court, as the case may be.
- (2) A writ or warrant of execution may be issued by the clerk or the registrar of the court in question and executed by the sheriff of such court after the expiration of a period of six weeks after the date of the determination, on condition that no application contemplated in section 30P has been lodged.”

5.5 The consequence of paragraph 7 of the court order and section 30O of the Act is that this tribunal cannot determine this aspect of the complaint without the complainant first having approached the High Court and obtaining its leave to lodge it with this office. Since he has not done so, this tribunal has no jurisdiction to entertain this aspect of the complaint.

5.6 As advised, the second respondent has been placed under the curatorship of Mr A. L. Mostert. The principal officer of the fund is Mr P Ngqola. If the complainant has any further queries he would be advised to contact the second respondent. Its contact details are as follows:

Postal address : P.O. Box 1850
Johannesburg
2000

Telephones : (011) 706 6123 or 706 6249

5.7 For the reasons set out above this aspect of the complaint cannot succeed.

6. Relief

6.1 The order of this tribunal is as follows:

