



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: 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
Website: www.pfa.org.za

Our ref: PFA/NC/1673/2004/SG

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – D Bosnic v Amplats Officials Pension Fund

Introduction

- [1] This complaint relates to the nature and amount of the benefit that was paid to a member of a pension fund when he exited the fund, shortly before reaching retirement age. Your complaint was received by this office on 20 January 2005. The response to the complaint was received on 23 February 2005 and further written submissions were received on 15 August 2005. After considering further written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

Factual Background

- [2] You were employed by Anglo Platinum (“the employer”) from 18 April 1978 until 31 May 1993. You became a member of the Amplats Employees Pension Fund (“AEPF”) from 18 April 1978 until 14 August 1988 and remained a deferred member of AEPF when you joined Amplats Officials Pension Fund (“the fund) from 15 August 1988. When you left service on 31 May 1993, you received a lump sum gross benefit of R67 291,31 and commenced receiving a monthly pension of R1 058,54 from the fund.

V Ngalwana (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), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

Complaint

- [3] Your complaint is threefold. The first leg thereof relates to the type of benefit you received. You contend that the fund paid you an early retirement benefit instead of a normal retirement benefit. You are aggrieved by this and you contend that when you left service you only had two months left before reaching the retirement age.
- [4] The second leg of your complaint relates to the calculation of your benefit. You contend that the contributions you made to the fund from the period 18 April 1978 to 14 August 1988 are not included in the calculation of your benefit.
- [5] The third leg of your complaint relates to a monthly pension you are currently receiving from an annuity purchased on your behalf by the AEPF from Metropolitan. Your complaint is that your pension was to have increased from 1 July 2001.

Fund's response

- [6] Regarding the first leg of your complaint, the fund disputes that you were paid an early retirement benefit. It contends that you received a late retirement benefit. To advance this contention the fund relies on the definition of pensionable age which stipulates:

“PENSIONABLE AGE “ shall mean for a member (other than a female (55) member) sixty-two years and six months , reduced by one month for every eight completed months of underground employment and one month for every twenty-eight completed months of employment that is not underground employment and for a female (55) member fifty-five years. The pensionable age of a member shall be determined by the Trustees, who may use any approximate method of calculation as they think fit.”

- [7] The fund contends that it is apparent from the definition of the pensionable age that as regards the male member there is no set retirement age. The retirement age is determined by the trustees who may use any approximate method of calculation they think fit taking cognizance of the member's years of service and whether the service was performed underground or not. In terms of the calculation performed by trustees, your retirement date would have been 19 November 1992. At this date you were 59 years and 1 month old. However, you retired on 31 May 1993. It is for this reason that you received a late retirement benefit.
- [8] Your benefit, the fund contends, was paid in terms of Rule 21 which

regulates payment of late retirement benefit. The rule provides:

“Subject to the provisions of Rule 21ter, a member who retires or is retired from the service of an employer on or after reaching the pensionable age shall be entitled, on so retiring or being retired to the benefit prescribed in Rule 24.”

[9] Further, Rule 21ter provides:

“If a member (other than a female (55) member) retires or is retired from service of an employer after the date of attaining the pensionable age, he shall be entitled to a pension equal to the pension prescribed in Rule 24, increased by five-twelfths of one per cent for each complete month of the period from the date of attaining the pensionable age to the date of his retirement up to a maximum of 60 months.”

[10] In turn Rule 24(1) provides:

“The benefit to which a member shall be entitled in terms of Rule 21 shall be a pension equal to 15% of the total contributions in respect of that member, provided that if the total contribution including the bonus pension and past service pension and any bonus and past service pension and any bonus declared in accordance with Rule 57(1) *bis* is less than R42, the member shall be granted a pension of R42 as long as his total pension in terms of the rules is less than R42.

[11] Rule 57(1) *bis* provides:

“The trustees may from time to time on the advice of the actuary and with the approval of the Company declare a bonus payable to any person entitled to a past service pension in terms of Rule 54 and may similarly at any time increase or decrease such bonus. At the time of such declaration or increase or decrease the Trustees shall on the advice of the actuary and with the approval of the Company state the amount of the bonus or increase or decrease and the date or dates upon which such bonus or increase shall commence and may state different commencing dates in respect of different pensioners. The Trustees may similarly declare an interim bonus on the advice of the actuary and with the approval of the company.”

[12] The fund submits that the bonus factor declared by the fund in terms of Rule 57(1) *bis* was 1,07% of total contributions for each year of membership at the time you retired.

[13] The fund provided the calculation of your benefit as follows:

“For the period 15 August to 31 May 1993 the following contributions were made to the Fund on your behalf:

Member contributions (7,5%)	R16 606,60
Deemed contributions (4,0%)	R 8 856,77
Employer contributions (11,72%)	<u>R25 950,23</u>
Total contributions	R51 413,60

Your annual pension of 15% of total contributions was R7 712,04 (in terms of Rule 24(1)).

Your annual bonus pension of 1,07% of total contributions for each year of membership (15 years, 1 month) was R8 298,16.

Your full annual pension for formal retirement was therefore R16 010,20. As your retirement date was 6 months after your normal retirement age, this pension was enhanced by 2,5%. Your full pension (basic and bonus) at your retirement date was therefore 16 410,46.

You commuted one-third of your pension for a cash lump sum of R57 956,27, which meant that your pension was reduced to R10 940,31 per annum.

In addition to the above, you converted your DB Lump sum death benefit (of 24 times monthly pension) to DBS pension. Of this you commuted one-third, for a lump sum of R9 335,04, with a resultant pension of R1 762,20 per annum.

In summary, your benefit at retirement on 31 May 1993 was made up as follows:

Lump Sum

From normal pension	R57 956,27
From DBS pension	<u>R 9 335,04</u>
Total	R67 335,04

Monthly Pension

Normal pension	R 911,69
DBS pension	<u>R 146,85</u>
Total	R1 058,54"

- [14] The fund argues that Rule 21*ter* provides for an enhancement of a member's benefit when a member leaves service after the retirement date. As you left service 6 months after the retirement date your full pension was enhanced by 2,5%..
- [15] Regarding the second leg of your complaint, the fund contends that the contributions you made from 18 April 1978 to 14 August 1988 are not included in the calculation of the benefit you received from the fund for the reason that during the period in question you were not a member of the fund, but you were a member of the AEPF. You joined the fund on 15 August 1988. According to the fund, when you left service you commenced receiving a pension from the AEPF and from the fund itself, both of which were subsequently outsourced, in your name, to Metropolitan Life Limited.
- [16] Regarding the third leg of your complaint, the fund contends that since you are no longer a pensioner of any of the two funds, your complaint should be directed against the insurer, Metropolitan Life.

Determination and reasons therefor

- [17] The fund provided this office with the rules which regulate the payment of your benefit and the detailed computation of your benefit. It is evident that the fund paid you the late retirement benefit. I am satisfied that the calculation provided by the fund is in accordance with the above rules. Your contention that you were paid an early retirement benefit cannot be sustained.
- [18] Regarding the second leg of your complaint, I am persuaded by the explanation provided by the fund for excluding the contributions you made from 18 April 1978 to 14 August 1998, in calculating the benefit you received from the fund. During the tenure of your employment, you belonged to two funds. Although they involve one participating employer, they are separate entities. From 18 April 1978 to 14 August 1998 you contributed to AEPF and remained a deferred member when you joined the fund on 15 August 1988. When you left service, a monthly benefit of R1 363,30 from AEPF became payable to you. Insofar as the calculation of that portion of your benefit pertaining to your membership of the AEPF is concerned, the fund cannot be answerable for that. Thus, your contention that your contributions from 18 April 1978 to 14 August 1988 are not included in the benefit you received from the fund cannot be sustained.
- [19] Regarding the third leg of your complaint, I lack jurisdiction to investigate and adjudicate upon the complaint. In terms of section 1 of the Act, I am empowered to investigate complaints which relate to the administration of a pension fund organization, the investment of its assets and the interpretation of its rules. Your complaint in this regard concerns an annuity contract entered into between you and Metropolitan Life, which is independent of any pension fund organization. Thus, the third leg of your complaint cannot be defended by this office.

Relief

[20] In the result, your complaint cannot succeed.

DATED AT CAPE TOWN THIS THE DAY OF 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator