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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – M W NKOSI (“the complainant”) v SOUTH AFRICAN MUNICIPAL WORKERS’ UNION NATIONAL PROVIDENT FUND (“the first respondent”) & GOVAN MBEKI MUNICIPALITY (“the second respondent”)

1. Introduction

- 1.1 This matter concerns the computation and payment of a retirement benefit and the payment of a funeral scheme benefit.
- 1.2 The complaint was received by this tribunal on 17 October 2005. On 26 July 2006 a letter was dispatched to the respondents giving them until 21 August 2006 to submit their respective responses to the complaint. A response was received from the first respondent on 25 October 2006. A reply was received from the complainant. A copy of the complainant’s reply was sent to the first respondent for a response by 15 November 2006. On 4 December 2006 the first respondent submitted a further response.
- 1.3 A response was received from the second respondent on 22 May 2007.
- 1.4 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor follow.

2. The background facts

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 is the spouse of the late Mr. B Seboko (“the deceased”) who passed away on 31 March 2004. The deceased was employed by the second respondent from 30 November 1992 until his early retirement on 31 July 2003. By virtue of his employment the deceased joined the first respondent with effect from 1 November 1997 until his early retirement in July 2003.

2.2 On 9 February 2006 the first respondent paid the deceased’s net early retirement benefit of R38 775.86 to his deceased estate.

3. The complaint

3.1 The complainant states that she did not receive payment of the funeral benefit, allegedly amounting to R10 000.00, after the deceased passed away. The complainant now seeks payment of the benefit.

3.2 The complainant is also dissatisfied with the retirement benefit that was paid by the respondent. The complainant states that the deceased’s salary slips state that contributions for the “Pension Fund” were deducted. Thus, the complainant states the benefit should have been paid by a pension fund and not the first respondent, which is registered as a provident fund.

4. The response

4.1 The first respondent’s administrator, Lekana Employee Benefits Solutions (Pty) Ltd, states that the rules of the respondent does not make provision for the payment of a funeral benefit on the death of a member. According to the administrator the union, South African Municipal Workers Union (“the union”), of which the deceased was a member, does offer funeral benefits to its members through a policy issued by an insurer. The administrator suggests that the complainant take the matter up with the union.

4.2 As regards the payment of the retirement benefit from the first respondent and not the pension fund, the administrator states that the deceased was a member of the first respondent. The administrator further states that the first respondent has no control over the annotations inserted by the employer on a salary slip. Furthermore, the deceased became entitled to receive a retirement benefit from the first respondent when he retired from the second respondent’s service. According to the administrator the deceased did not sustain any loss as a result of the incorrect annotation, because the benefit entitlement of the deceased upon his retirement was determined with reference to the rules, which provides that a member will become entitled to his full share of the fund upon his retirement. The administrator further states that the only difference between retirement from a provident fund and from a pension fund would be that the provident fund pays the full benefit as a lump sum, whereas the pension fund would have used the same lump sum amount to purchase a pension for the deceased.

4.3 According to the second respondent the deceased was a member of the first respondent.

4.4 As regards the payment of the funeral benefit, the second respondent states that the deceased was a member of the SAMWU National Funeral Scheme ("the Scheme") by virtue of his membership of the union. The second respondent further states that it is not liable for the payment of the benefit but that the complainant should contact the Scheme.

5 Determination and reasons therefor

5.1 *Complaint about the non-payment of a funeral benefit*

5.2.1 The first respondent is a registered fund in terms of the provisions of the Act and it is bound by its rules in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the first respondent, the members, the employer and any service provider such as the administrator of the first respondent may only do that what is set forth in the rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E).

5.2.2 The rules of the first respondent do not make provision for the payment of R10 000.00 as a funeral benefit upon the death of a member. Thus, the first respondent is not liable to pay the complainant a funeral benefit. In the circumstances, this part of the complainant's complaint cannot succeed.

5.2.3 This tribunal suggests that the complainant contact the union in order to obtain the documents necessary to file a claim. In the circumstances, this part of the complainant's complaint cannot succeed.

5.2 *Complaint about payment of a retirement benefit from the first respondent rather than a pension fund*

5.2.1 It is evident from the papers before this tribunal that the employees of the second respondent, who were members of the union, could either belong to the first respondent or to the Samwu National Pension Fund ("the pension fund"). It appears from the schedule to the rules of the first respondent and the pension fund that it is left to the second respondent to decide which of the two funds an employee will join.

5.2.2 The second respondent states in its response that the deceased was a member of the first respondent from the commencement of his employment in 1992. The mere fact that the annotation used by the second respondent, on their salary advice, was "Pension Fund" does not mean that the deceased was a member of the pension fund. The word "pension fund" is generally used by employers as an all-encompassing word. In terms of section 1 of the Act "pension fund" means a pension fund organisation which in turn is used to refer to a pension fund or provident fund amongst others. This tribunal is

satisfied that the deceased was a member of the first respondent. Furthermore, the first respondent cannot be held responsible for annotations used by the second respondent.

5.2.3 Notwithstanding the above, the quantum of the retirement benefit would not have been different to that which the deceased would have received had he been a member of the pension fund. The main difference between retirement from the respondent and the pension fund, as pointed out by the administrator, is the manner in which the retirement proceeds are paid to the member. The retirement proceeds payable by the first respondent are normally paid as a lump sum, while in the case of the pension fund the member can choose to commute to cash a maximum of one-third of the proceeds and to receive the remaining two-thirds in the form of an annuity (i.e. a pension which can be paid monthly, quarterly or annually). However, there is nothing preventing a member of a provident fund to use his retirement proceeds to purchase an annuity.

5.3 *Complaint about the quantum of the retirement benefit*

5.3.1 The payment and computation of an early retirement benefit is provided for in rule 5.4. In terms of rule 5.4.1 a member who is unable to continue working due to ill health, may with the consent of the employer, retire at anytime prior to his normal retirement date on the grounds of ill health. The deceased's normal retirement date was 1 February 2006 when he would have been 65 years old. Rule 5.4.1 further provides that the member shall be entitled to the retirement benefit specified in the schedule and payable in accordance with rule 5.6. In terms of rule 5.6 retirement benefits shall be payable as a lump sum.

5.3.2 In terms of the schedule a member's retirement benefit shall comprise his "Member's Share". In terms of rule 9.2 a member's "Member's Share" shall comprise all contributions made by the member and his employer, any voluntary contributions or amounts transferred from other funds and a portion of the investment returns.

5.3.3 In a letter attached to the complainant's reply the respondent's administrator provided the following breakdown of the benefit:

"Return of contributions plus interest	R40 403.22
Share of investment reserve	<u>R 1 616.12</u>
Total benefit	<u>R42 019.34</u>
Less tax	<u>R 3 243.48</u>
 Benefit due	 <u>R38 775.86"</u>

5.3.4 This tribunal is satisfied that the retirement benefit was computed correctly in terms of rule 5.2.1. Thus, the second respondent paid the correct benefit to the deceased estate.

