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Please quote our reference: PFA/KZN/2230/2005/nvc

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): W J Coetsee v Walter Roux and Associates Group Pension Fund (“the fund”) and Walter Roux and Associates (“the employer”)

Introduction

[1] Your complaint concerns the calculation of your retrenchment benefit. The complaint was received by this office on 15 June 2005 and a letter acknowledging receipt thereof sent to you on 24 June 2005. On the 23 June 2005 a letter was dispatched to the fund giving it until 14 July 2005 to file a response to the complaint. The response from the fund was received by electronic mail on 14 July 2005. Further information required from the fund was received by this office on 6 March 2006. On 25 May 2006 my assistant telephoned you to discuss the fund’s response to your complaint and during these discussions you advised her of your reply to the fund’s response. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. As the background facts are known to the parties I shall not burden this determination by repeating them here. My determination and reasons therefor appear below.

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

- [2] Your complaint concerns the computation of the benefit that was paid to you by the fund after you were retrenched from the company on 31 December 2002, after about 18 years' service with your employer from 1 February 1984. You received only your contributions and question whether you are not also entitled to the employer's contributions, especially in view of the fact that you left the service of the company through no fault of your own. In the telephonic reply to the fund's response you stressed that you felt that you were entitled to the employer's contributions as well.

Response by Sanlam Life Insurance Company ("Sanlam"), the fund administrators

- [3] Sanlam says that you were a member of the fund for 15 years and 11 months and you were entitled to receive only your contributions plus interest.
- [4] Sanlam states that the benefit was calculated in terms of the rules as follows:

"Member contributions	R65 031.66
Plus interest	R21 548.78
Plus demutualization credit	R 6 368.63
Plus interest on demutualization credit	<u>R 3 666.44</u>
Total benefit	R96 615.51"

Determination and reasons therefor

- [5] In terms of part 7(1) of the rules the retrenchment benefit is equal to the members contributions, plus interest at an annual rate of 4.5%, compounded annually, provided the member contributes to the fund as prescribed in part 3 of the rules. The rules also state that the member has a choice to opt for either a cash payment or to defer the benefit to his normal retirement age, from when a monthly pension would then become payable to him.
- [6] The rules of the fund do not provide for the payment of the employer's contributions to the member, at retrenchment, resignation or dismissal.
- [7] With effect from 7 December 2001 legislation was amended to make provision for the payment of minimum benefits to members who exit from a fund. Essentially the member, who ceases to be a member of the fund, prior to retirement (in circumstances other than the liquidation of the fund) is entitled to a benefit that is not less than the "minimum individual reserve" which is calculated in terms of section 14B of the Act. The entitlement to this minimum benefit applies from a date 12 months after the surplus

apportionment date.

[8] In the present case, my assistant established from Sanlam that the surplus apportionment date of the fund was 1 March 2003 and on 23 May 2006 the Registrar of Pension Funds confirmed this date as well. Since your termination of employment on 31 December 2002 and accrual date of the retrenchment benefit, payable by the fund, preceded the surplus apportionment date you are not entitled to the minimum benefits in terms of the provisions of the Act.

[9] As you received benefits calculated in terms of the rules of the fund, your complaint cannot succeed.

[10] Your file is hereby closed.

Dated at Cape Town on this the day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator