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Please quote our ref: PFA/GA/10564/2006/LN

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): R M RAMAKERS (“the complainant”) v JOHN DEERE PENSION FUND (“the respondent”)

1. Introduction

1.1 The complaint concerns the non payment of a withdrawal benefit.

1.2 The complaint was received by this office on 8 September 2006. A letter acknowledging receipt thereof was sent to the complainant on 9 October 2006. On the same date a letter was dispatched to the respondent giving them until 8 November 2006 to file their response to the complaint. A response was received from the respondent on 8 September 2006.

1.3 Having considered the written submissions filed before this office, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

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. Factual Background

- 2.1 The complainant applied for his benefits to be transferred to other Funds. He wanted to have his Pension Fund to be transferred to the respondent's Preservation Fund and his Provident Fund to Old Mutual Preservation Fund.
- 2.2 When confirming the said transfers, the respondent furnished incorrect figures to the complainant. The complainant would like the respondent to recalculate and give him correct figures.

3. Complaint

- 3.1 The complainant became the respondent member on 1 October 1992 and when he resigned from his employer in April 2006 he became entitled to a withdrawal benefit. He applied for same to be transferred to Preservation Funds. He is aggrieved by the fact that the respondent gave him incorrect figures of his transferred benefits. He explained by referring to the correspondence between him and the respondent.
- 3.2 The transfer of the Pension Fund, which is made up as follows: Funds at Work (31 215.95) plus Old Pension (R1 147 130.27) all totalling R1 178 346.22 ("the pension") was transferred to the respondent Preservation Fund. The Provident Fund which is made up as follows: Funds at Work (R27 941.62) plus Old Pension (R313 128.54) all totalling R341 070.76 ("the provident fund") was transferred to Old Mutual Preservation Fund.
- 3.3 In a letter dated 5 April 2006 the Complaint received a written quotation reflecting a Pension Fund withdrawal benefit of R1 178 346.22 from the respondent.
- 3.4 In a letter dated 2 June 2006 he received a written confirmation from Old Mutual that an amount of R272 608.57 had been transferred to them. A further confirmation in a letter dated 18 July 2006 confirming transfer of a further amount of R 34 869.33.
- 3.5 In a letter dated 26 July 2006 a confirmation from the respondent that the Pension Fund amounted to R 1 018 430.65 and in letter dated 14 August 2006, he was advised that the Pension Fund now amounted to R1 056 884.71
- 3.6 On 16 August 2006 the complainant had a meeting with, Mr Clipsham, the respondent consultant ("the consultant"). The Preservation Fund

Policy reflected an amount which was R11 000.00 less than the value detailed in the letter dated 14 August 2006.

- 3.7 On 29 August 2006 the consultant delivered the a copy of the policy to the complainant's office representing the final transfer of the pension Fund withdrawal benefit to the nominated preservation fund. The amount transferred was R 1 062 897.34, representing the R 1 056 884.71 plus interest on late allocation in the sum of R6 012.13.
- 3.8 The complainant submitted that the respondent had provided unreliable and inconsistent withdrawal benefits figures throughout the four-month period. He would like the respondent to recalculate the figures and furnish him with the correct and accurate results of the whole transaction.

4. Responses

- 4.1 This office received a response from respondent.
- 4.2 The respondent attached a letter dated 14 August 2006, addressed to the consultant, which clearly indicated the correct calculation utilized for the complainant's withdrawal benefit. It is confirmed that an audit was being conducted on the complainant's withdrawal benefit and that same would be sent to him. Same would also include the calculation of interest on the late transfer of the withdrawal benefit.
- 4.3 In a letter referred to above, (14.08.2006) the respondent explained that it used a spreadsheet that the complainant used in his calculations. Same was used to calculate the return of his combined old pension and provident fund. The combined annualized return reflected 26.9%. It was explained that the assets were invested in the two portfolios specified, with the market related portfolio yielding a return of (not annualized yet) 42.4% from 1 March 2005 to 31 May 2006. Over this period the conservative portfolio yielded 14%. The annualized returns of these portfolios are 32.7% and 11% respectively and 21.9% return combined under a 50/50 weighting. From this calculation it became clear that the complaint enjoyed an actual 29.9% return compared to an expected 21.9% pre-cost theoretical return.
- 4.4 The respondent further explained that the return on the pension and provident funds differed markedly because all the market related assets are held in the pension fund rather than a bit in both funds. These assets are then balanced from time to time taking both funds into account.
- 4.5 The respondent stated that despite the incorrect quote that aggrieved the complainant, the latter has received a just and fair return.

5. Determination and reasons therefor

- 5.1 The complainant was dissatisfied by the incorrect quote that the respondent gave to him even after he made it aware of the same. The respondent has admitted that the figures given to the complainant was incorrect and asserted that the complainant received a fair and just return.
- 5.2 It is evident from the above that the complainant has been attended to by the respondent and same will / has been sent to the complainant.
- 5.3 Section 13A (5) of the Act is of particular importance in this regard. The section reads:

“When a person who, for any reason except a reason contemplated in Section 14, 28 or 29 has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person’s written request to it, or if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to other fund in full. The transfer shall be subject to the deductions in terms of section 37D and to the rules of the first fund, transfer that benefit or right to the other fund in full. The transfer shall be subject to the deductions in terms of section 37D and to the rules of the first fund”

Section 13A (7) (c) provides as follows:

“(7) Interest at a rate as prescribed from time to time by the Minister by notice in the Gazette shall be payable on

The value of any benefit, or right to any benefit, not transferred by the first fund to the other fund before the expiration of the period prescribed therefore by subsection (5).”

- 5.4 On examination of the above provisions it is clear that interest on late payment should be payable a prescribed rate. Transfers should have taken place in accordance with sections 13A (5) and (7) ((c)

6 Relief

In the result, this office makes the following order:

- 6.1 The respondent is ordered to correctly calculate the complainant’s withdrawal benefit plus interest of 15, 5 percent per annum and make the necessary transfers within six weeks of the date of this determination

