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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): W. SCHARNECK (“the complainant”) v BOKOMO PENSION FUND (“the first respondent”) and PIONEER FOODS (PTY) LTD (“the second respondent”)

Introduction

- [1] The complaint concerns the complainant’s entitlement to employer contributions in the calculation of his withdrawal benefit, which he received on termination of his employment in February 1997.
- [2] The complaint was received by this office on 5 January 2006 and a letter acknowledging receipt thereof was sent to the complainant on 18 January 2006. The following day a letter was dispatched to the respondents giving them until 10 February 2006 to file a response to the complaint. Responses were received from the first respondent and the second respondent on 13 February 2006.
- [3] After considering the papers, it is considered unnecessary to hold a hearing in this matter.

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

The complaint

- [2] The complainant commenced service with the employer in 1980, and remained so employed until her resignation effective 28 February 1997. As a consequence of the complainant's employment she became a member of the first respondent. On her withdrawal from the first respondent she states that her benefit did not include the employer component of the contributions paid on her behalf. The complainant asked that this tribunal intervene in the matter with a view to directing the first respondent to pay her the employer's contributions she alleges are still due in an amount of 13% of her pensionable salary, together with interest thereon.

Response

- [3] The response from the second respondent advises that the complainant did not become a member of the first respondent, since this only commenced on 1 January 1998, after she had already left service. It states, however, that the complainant was a member of the first respondent described above, but that all the assets and liabilities of that fund have been transferred, and that it is in the process of deregistration.
- [4] A response was received on behalf of the first respondent from Sanlam Life Insurance Ltd ("Sanlam"), the previous administrator of the first respondent, which indicates that the first respondent no longer exists for the reasons set out in the employer's response. It states further that the benefit that the complainant received on her withdrawal represented her due entitlement in terms of the rules of the first respondent. It cites clause 1(a)(i) of Part 7 of the rules, which apparently provides for a return of employee contributions only, together with interest.
- [5] Sanlam has taken the further point that the complaint has become time-barred in terms of section 30I of the Act, since it ought to have been filed by March 2000, but was only served on this tribunal in January 2006. Therefore, it contends, the complaint ought to be dismissed.

Determination and reasons therefor

Time-barring

- [6] Section 30I of the Pension Funds Act imposes certain time limits with regard to lodging of complaints before the Adjudicator and states as follows:

- “(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.
- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
- (3) The Adjudicator may on good cause shown or of his or her own motion -
- (a) either before or after expiry of any period prescribed by this Chapter, extend such period;
- (b) condone non compliance with any time limit prescribed by this Chapter.”

[7] The complainant’s grievance arose in 1997 when she received her withdrawal benefit from the first respondent. The complaint ought therefore to have been lodged in 2000, but was only received at this office in 2006. The complaint is accordingly six years out of time.

[8] There is good reason for a limit to be imposed on the time during which litigation may be launched and the Constitutional Court has pronounced on this. In *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) the Court said (at paragraph [11]):

“Rules that limit the time within which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigation damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can be obtained have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They serve a purpose to which no exception in principle can cogently be taken.”

[9] However, that the complaint has become time-barred in terms of section 30I of the Act is not the end of the matter as this tribunal still has a discretion to extend the “three-year” time period or to condone non-compliance therewith. But the complainant needs to show cause to enable this tribunal to do that.

[10] The Supreme Court of Appeal (or Appellate Division as it was then known) has pronounced upon the standard that must be met for condonation to be granted in circumstances like these. In *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) the court said (at 532B-E):

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR