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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 ("the Act") – LC MOSES v IMPERIAL TRUCK SYSTEMS PROVIDENT FUND

Introduction

[1] This complaint concerns the retirement benefit which you received from the fund. The complaint was received by this office on 9 June 2005 and a letter acknowledging receipt thereof sent to you on 7 July 2005. On 11 July 2005 a letter was dispatched to the fund giving it until 1 August 2005 to file a response to the complaint. The response dated 27 July 2005 was received on 2 August 2005. On 5 August 2005 the response was sent to you for a reply by 19 August 2005. A reply was received from you on 6 September 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Facts

[2] You became a member of the Imperial Truck Systems Provident Fund ("the fund") with effect from 7 June 1995. Although you were due to retire with effect from 1 September 2003, your employer (Imperial Truck Systems (Pty) Ltd) asked you to stay on. Your effective date of retirement was 31 May 2004 whereupon you received a retirement benefit of R55 336.89 from the fund.

Complaint

[3] You contend that you are a category B member and as such, the employer should have contributed 11.2% of your monthly salary to the fund and not 7.5% indicated on your statement. (You do not specify to which statement

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

you are referring). You also state that the employer contributions indicated on your pay slips were far greater than that which you received. On this basis you contend that you are entitled to a greater retirement benefit than you received.

[4] You also state that you did not receive 'any sort of disability benefit during or after [your] employ".

[5] You state further that while you continued paying contributions to the fund a portion of which was allocated to risk benefits, you in fact did not derive the benefit of death or disability cover for the period from 1 September 2003, when you were due to retire, to 31 May 2004, your actual retirement date.

Response

Old Mutual

[6] Old Mutual, the administrator of the fund, contends that you were a category A member, and not a category B member. Therefore, according to the fund, you were not entitled to an employer contribution of 11.20% of monthly salary as you assert.

[7] According to Old Mutual, as a category A member, at the inception of your membership you were entitled to an employer contribution of 3.2% of monthly salary. (This was later decreased in terms of an amendment to the rules). However a portion of these monthly contributions were applied as premiums to pay for death, disability and funeral cover as well as to pay for the fund's administration costs.

[8] Regarding your contention that you received no disability benefit during or after your employ, Old Mutual states that this did not mean that you became entitled to a greater benefit on your retirement. Old Mutual contends that you received the benefit to which you were entitled in terms of the rules being your "Accumulated Credit".

[9] Old Mutual concedes that once you turned 65, the insured benefits ceased in terms of the group life assurance policy. According to the fund, there is a lacuna in the rules concerning the allocation of a portion of the employer contributions towards death and disability benefits in this situation. Old Mutual does however argue that the fact that the rules are silent in this regard does not mean that a member is entitled to the portion that otherwise would have been allocated. Old Mutual states further that it has requested the fund to respond directly to my office regarding this issue.

Fund's response

[10] According to the fund, you in fact had the benefit of the risk cover during your extended period of employment. Therefore you have no basis for your claim in this regard.

Determination and reasons therefor

Category of membership

[11] The rules distinguish between members who had transferred from the Transport and General Workers National Fund and the Nominated Carriers Provident Fund (rule 3.1.2.1(b)) and all other members (rule 3.1.2.1(a)). The employer contributes a greater percentage of monthly salary to members falling into the former category than those falling into the latter category.

[12] The fund states that you did not transfer from the Transport and General Workers National Fund or the Nominated Carriers Provident Fund. You do not contest this assertion in your reply. Therefore in terms of the rules, I must accept Old Mutual's version that you were a category A member and not entitled to the greater contribution paid by the employer in respect of category B members.

Pay slips

[13] What was reflected on your pay slips is not a matter falling within my jurisdiction.

Employer contributions

[14] With regard to your contention that you did not receive the employer contributions to which you were entitled, apart from the fact that you were a category A member and therefore entitled to the lesser of the two employer contribution rates (see paragraph 11), it must also be borne in mind that a large proportion of the employer contributions were applied to costs (risk cover costs and administration costs) as set out below.

[15] Initially the employer contributed 7.5% of monthly salary in respect of category A members of which, in terms of the rules, only 2.3% was allocated to retirement savings. As at the date of your retirement, the portion of the employer contributions being allocated to retirement savings was only 1.735% of monthly salary.

[16] I enclose the breakdown submitted by the fund of all contributions paid on your behalf. You will note that there is a notable discrepancy between the member contributions (all of which were allocated to retirement savings)

and the portion of the employer contribution allocated to retirement savings.

Disability benefit

[17] Although you never received a disability benefit that does not mean that you did not receive any consideration for the premiums deducted from the employer contributions in this regard. The consideration you received was that in the event you did become disabled as defined, you would be paid a disability benefit. In other words you were insured for the risk of disability and the fact that the risk did not materialize in your case is not relevant.

Insurance premiums paid after 65 years

[18] In terms of clause 5.3.1 of the group life policy, the insured benefits ceased when you turned 65 (contrary to the fund's contention). Therefore you are correct that although premiums were being deducted from the employer's contributions in this regard, you were not covered for death and disability once you turned 65. The question is whether this gives rise to any claim against the fund.

[19] The fund did not act contrary to the rules since in terms of rule 3.1.2.2.1, a portion of the employer's contributions were payable as premiums under the Imperial Truck Systems Insured Benefit Plan. Accordingly you do not have any contractual claim against the fund.

[20] In order to succeed in a delictual claim against the fund, you would have to show that the fund's act or omission caused you loss. You may have argued that by deducting the premiums in question from the employer's contributions after you had already attained the age of 65 years, the fund misrepresented to you that you were insured for death and disability with the result that you did not secure death and disability cover elsewhere. However neither the risk of death nor disability materialized in your case. Thus even assuming misrepresentation on the part of the fund, this cannot be said to have caused you any loss. Therefore you do not have a delictual claim against the fund either.

<u>Relief</u>

[21] In the result your complaint cannot succeed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2006.

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR