Mrs. Q. Dyosi  
311 Murray & Roberts Hostel  
Kwa-Zakhele  
PORT ELIZABETH  
6205

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 ("the Act") – Q DYOSI ("complainant") v SOUTHERN & EASTERN CAPE BUILDING INDUSTRY PROVIDENT FUND ("first respondent") AND ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD ("second respondent")

[1] INTRODUCTION

1.1 The complaint concerns the quantum of the withdrawal benefit that was paid to the complainant following his exit from the first respondent.

1.2 The complaint was received by this tribunal on 11 March 2009. A letter

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No, 1956 (Act No. 24 of 1956)

-The service offered by the Pension Funds Adjudicator is free to members of the public-
acknowledging receipt thereof was sent to the complainant on 26 March 2009. On 27 March 2009 a letter was dispatched to the respondents giving them until 27 April 2009 to file a response. A response, which was forwarded to the complainant, was received on 16 July 2009. No further submissions were received from the parties.

1.3 After considering the written submissions it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant was employed by Murray & Roberts Ltd (“the employer”) from 1982 until his employment was terminated on 28 February 2009. He was a member of the first respondent by virtue of his employment.

2.2 Upon the termination of his employment the complainant became entitled to receive a withdrawal benefit from the first respondent. The second respondent paid the complainant an amount of R5 427.94 as a withdrawal benefit.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the quantum of the withdrawal benefit that was paid to him. He submits that the benefit that was paid to him is incorrect as he worked for the employer for 27 years and three months. Further, he states that he was employed by the employer again in 2009 for nine months and was paid R879.00 as a withdrawal benefit upon his retrenchment.
3.2 The complainant submits that other members who were retrenched by the employer are receiving monthly pensions, but he is not receiving the same benefit. Moreover, he contends that he did not receive a large enough severance package. Therefore, the complainant requests this tribunal to assist him in obtaining his full benefits from the respondents.

[4]  **RESPONSE**

4.1 The second respondent submitted that their investigations revealed that the employer was not a participating employer in the first respondent until March 1995. Thus, it averred that the complainant was not eligible to be a member of the first respondent until March 1995. It stated that the complainant only became a member of the first respondent from 1 March 1995 and not from 1982 as indicated in his complaint.

4.2 Their records show that the complainant entered the building industry in 1977 and had withdrawn benefits from the first respondent on three occasions after joining the fund.

4.3 The complainant withdrew from the first respondent for the first time on 27 October 1999 and received a withdrawal benefit in the amount of R4 230.06. The complainant withdrew from the first respondent for the second time on 23 August 2001 and received a benefit in the amount of R887.69. The complainant was employed by the employer at all times and the benefits were paid to him each time his employment was terminated.

4.4 The complainant rejoined the first respondent on 1 March 2005 until 28 February 2009 following his retrenchment. The complainant was paid a withdrawal benefit in the amount of R5 427.94 on 5 March 2009, which was made up of his fund credit in terms of Rule 10(b) of the first respondent’s rules. It emphasised that the amount of R5 427.94 included
the complainant’s and the employer’s contributions, plus investment returns.

4.5 Therefore, the second respondent submitted that the complainant’s withdrawal benefit was computed and paid correctly in terms of the first respondent’s rules as required by section 13 of the Act, read together with the ruling in the matter of Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA).

5.1 The issue that falls for determination is whether or not the complainant’s withdrawal benefit was computed correctly in terms of the first respondent’s rules.

5.2 Any benefit that is due to a member of a fund is payable in terms of the fund’s rules as required by section 13 of the Act, read together with the dictum in Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA).

5.3 Therefore, it is necessary to refer to the relevant rule that regulates the payment of withdrawal benefits upon the termination of employment. Rule 10(b) of the first respondent’s rules is apposite to the present complaint and it reads as follows:

“10. If a MEMBER ceases to be employed in the INDUSTRY due to his resignation, dismissal, redundancy or retrenchment from service in the INDUSTRY, or for any other reason before he qualifies for any benefit in terms of these RULES:

(a) …
(b) If the MEMBER has not applied for or has not been granted the
benefit in (a) above within 12 months after ceasing to be employed in the INDUSTRY, the following amount shall be payable in cash in full and final settlement of all entitlement under the SCHEME of the MEMBER or anyone claiming under him:

(b.1) the total MEMBER’S CONTRIBUTIONS made by him, plus
(b.2) 10% of the NET EMPLOYER’S CONTRIBUTIONS made in respect of him for every year in which the MEMBER was, and still is, credited with at least one CONTRIBUTION to the SCHEME or the INDUSTRY’S Pension Scheme, as under RULE 4(a), up to a maximum of 100% of said total, plus
(b.3) 6% compound interest per year on the amounts in (b.1) and (b.2) above or such other rate of interest as may be determined by the trustees in consultation with the COUNCIL from time to time and after giving the COUNCIL 3 months’ notice thereof.

PROVIDED THAT:

(i) The refund of CONTRIBUTIONS described above shall not exceed the MEMBER’S SHARE OF FUND and will only become payable after the MEMBER has been out of the INDUSTRY for a period of 12 months.”

5.4 This rule must be read with the provision of minimum benefits in section 14A of the Act. Thus, the complainant became entitled to receive his member’s share of fund.

5.5 The respondents submitted a breakdown of the complainant’s withdrawal benefit that was paid to him following his withdrawal in February 2009. It reads as follows:

"Member Contributions  R3789.80
Company Contributions  R  893.24
Total Investment Returns  R  738.96
GROSS BENEFIT  R5422.00
5.6 The breakdown indicates that the complainant’s withdrawal benefit was made up of his share of the fund as it consisted of his total contributions, the employer’s total contributions, plus investment return. Therefore, the complainant’s benefit was paid and computed correctly in terms of the Act and Rule 10(b) of the first respondent’s rules.

5.7 There is an uncontested submission that the complainant withdrew from the first respondent on three occasions before his final withdrawal in February 2009. The complainant was paid withdrawal benefits on each exit from the first respondent. This explains why the complainant was paid R5 427.94 upon his final withdrawal.

5.8 The complainant could not have been a member of the first respondent from 1982 when he joined the employer as he was not eligible to be a member at that time. This is due to the fact that the complainant’s former employer only became a participating employer in the first respondent in March 1995. Thus, the complainant’s membership of the first respondent started in March 1995 until February 2009. It follows that the complainant’s submission that his withdrawal benefit is not comparable with his 27 years of service with the employer is a misconception as he was not a member of the first respondent for 27 years. According to the first respondent’s rules a member’s withdrawal benefit is calculated on the basis of his total contributions, the employer’s contributions plus fund returns. It is not affected by the years of service with the employer.

5.9 As regards the complainant’s dissatisfaction with his severance package, this is essentially a labour issue between him and his former employer, over which this tribunal has no jurisdiction (see Armaments Development and Production Corporation of SA Ltd v Murphy NO and Others [1991] 11
BPLR 227 (C) at 232A-H). In as much as this Tribunal does not have jurisdiction to deal with this aspect of the complainant’s complaint, it could be that the Commission for Conciliation, Mediation and Arbitration (“CCMA”) may enjoy jurisdiction. Therefore, the complainant may approach the CCMA, whose contact details appear at the end of this determination.

5.10 In light of the submissions, this tribunal is satisfied that the complainant’s withdrawal benefit was computed correctly in terms of the Act and Rule 10(b) of the first respondent’s rules.

[6] ORDER

1. In the result, the complaint cannot be upheld and is dismissed.

DATED AT JOHANNESBURG ON THIS 8th DAY OF FEBRUARY 2011

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DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrate’s Court
No legal representation