Dear Sir,


[1] INTRODUCTION

1.1 This complaint concerns the first respondent’s failure to pay a withdrawal benefit to the correct complainant and its subsequent failure to remedy the erroneous payment made to the complainant’s brother.

1.2 The complaint was received by this office on 16 January 2009. On 3 February 2009, an acknowledgement letter was sent to the complainant. On 5 February 2009, a copy of the complaint was forwarded to the first respondent, affording it the opportunity to file a response to the complaint on or before 5 March 2009. No response was received from the first respondent on the set date. On 10 January 2010, a follow-up letter was
sent to the first respondent, requesting it to submit a response on or before 8 February 2010. On 9 March 2010, a response was received by this office from the second respondent, being the first respondent’s administrator. A further response was received from the second respondent on 27 October 2010. No further submissions were received.

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

[2] FACTUAL BACKGROUND

2.1 The complainant was an employee of Roadway Logistics (“former employer”) until his employment was terminated on 30 September 2006. By virtue of his employment, the complainant became a member of the first respondent, until the termination of his employment.

2.2 The complainant and his brother, also Mr. S Mabetshe, were in the employment of the former employer during the same period. As a consequence of the termination of his employment, the complainant became eligible to receive a withdrawal benefit from the first respondent. However, upon the complainant’s enquiry into the payment of his withdrawal benefit, he discovered that the first respondent had paid the benefit to his brother. To the date of the lodgement of this complaint, the complainant has not received the payment of his withdrawal benefit.

[3] COMPLAINT

3.1 The complainant is concerned by the first respondent’s failure to pay his withdrawal benefit to his account and its continued failure to remedy its own erroneous payment.
3.2 The complainant requests this tribunal to investigate the matter and to compel the first respondent to make payment of his withdrawal benefit accordingly.

[4] **RESPONSE**

4.1 The second respondent submitted that it has two members registered with the first respondent, on its system, under the same initial and surname of the complainant. The second respondent submitted that its system displays the relevant information pertaining to the two members as follows:


4.2 The second respondent submitted that on 27 February 2007, payment of the withdrawal benefit was made to S. Mabetshe, with identification number 7309235614086 (the complainant) and deposited into his bank account at First National Bank.

4.3 The second respondent submitted that the complainant’s former employer confirmed that both members are brothers and furthermore, that it was the former employer who provided the bank statement to which both payments were made. The second respondent submitted that both payments were made to S. Mabetshe, with identification number 7602205741081 (being the complainant’s brother).

The second respondent’s further submission
4.4 The second respondent’s further submissions, dated 27 October 2010 were the following:

- The Fund was previously governed in terms a collective agreement concluded in a council in terms of the Labour Relations Act, 66 of 1995;

- On 10 December 2007, the Financial Services Board issued a directive with effect from 13 September 2007. The directive stipulated that bargaining council funds must register in terms of the Pension Funds Act on or before 1 January 2008;

- RF Administrators became the administrators of the Fund with effect from 1 May 2008;

- The complaint in question relates to the incorrect payment to the bank account of withdrawal benefits of one S Mabetshe to another S Mabetshe, who is the brother of the complainant;

- The payment was done relying on the bank statements provided by the employer when making such payment. This happened during 2007 when the first respondent was still administered by the Bargaining Council.

[5] Determination and Reasons Therefor

Jurisdiction

5.1 The first respondent is a fund created in terms of industrial council agreements in the form of Bargaining Councils, which is a process where employers, unions and the Department of Labour entered into collective agreements with the intention of regulating the interests of the parties in the specific industries. One of the achievements of this process was creating common pension funds in which employers in those industries could participate. Before 1 January 2008 it was not compulsory for Bargaining Council Funds to be registered with the Registrar of Pensions
Funds in terms of the Act, and as a consequence this Tribunal had no jurisdiction over them.

5.2 The Pension Funds Amendment Act, 11 of 2007 amended Section 2 of the Pension Funds Act, to read as follows:

“Application of Act

(1) Subject to section 4A and any other law in terms of which a fund is established, the provisions of this Act apply to any pension fund, including a pension fund established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and registered in terms of section 4.

(2)

(a) A pension fund established or continued in terms of a collective agreement contemplated in subsection (1) and not yet registered in terms of section 4, must register in terms of this Act before or on 1 January 2008...

(b) ""

5.3 The first respondent was provisionally registered as a pension fund on 25 April 2008, after the date on which the complainant’s withdrawal benefit was erroneously paid to his brother’s bank account. The current complaint relates to issues that transpired before the first respondent was registered. Therefore, this Tribunal has no jurisdiction to investigate and determine this complaint. However, the complainant in this case can approach the National Bargaining Council for the Road Freight Industry which oversees compliance with the National Bargaining Council for the Road Freight Industry’s Collective Provident Fund Agreement. The contact details of the National Bargaining Council for the Road Freight Industry appear at the foot of this determination.
5.4 In the event, no determination shall be made on the merits of this matter as this tribunal lacks jurisdiction in this matter.

[6] ORDER

1. In the result, the complaint cannot succeed and is hereby dismissed.

DATED AT JOHANNESBURG ON THIS 17th DAY OF OCTOBER 2011

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DR E.M DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

Cc: National Bargaining Council for the Road Freight Industry Pension Fund
    C/o Road Freight Administrators (Pty) Ltd
    P O Box 13377
    HATFIELD
    0028

    Ref: Fanie Bothma
    Fax: 011 488 2200

Registered address of the Fund:
Presidents Place
Floor 2, North Wing
148 Jan Smuts Drive
ROSEBANK
2122
Cc: National Bargaining Council for the Road Freight Industry
    ABSA Building, 141 Voortrekker Road
    Parow
    CAPE TOWN
    7500

Ref: The Management Committee
Fax: 021 930 6032

Section 30M filing: Magistrate’s Court
Parties: Complainant: Represented by Scorpion Legal Protection
      Respondents: Unrepresented