



Ground & 1st Floors
23 FREDMAN
Cnr. Fredman Drive & Sandown Valley Crescent
Sandown
SANDTON
2196

P.O. Box 651826, **BENMORE**, 2010
Tel: 087 942 2700; 011 783 4134 □ Fax: 087 942 2644
E-Mail: enquiries-jhb@pfa.org.za
Website: www.pfa.org.za

Please quote our reference: **PFA/FS/23081/2008/TD**

REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 of 1956 (“the Act”): M A MATSOLO (“complainant”) v MINE EMPLOYEES PENSION FUND (“respondent”)

1. INTRODUCTION

- 1.1 The complaint concerns the payment of a withdrawal benefit following the termination of the complainant’s employment.

- 1.2 The complaint was received by this office on 28 January 2008. On 19 March 2008, a letter was sent to the complainant acknowledging receipt of the complaint. On 25 March 2008 a copy of the complaint was forwarded to the respondent giving it until 25 April 2008 to file a response to the complaint. A follow-up response letter was forwarded to the respondent on 29 May 2008 giving it until 20 June 2008 to file a response

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956. The service offered by the Pension Funds Adjudicator is free to members of the public.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)

to the complaint. A response was received from the respondent on 29 May 2008. This response was forwarded to the complainant on 18 November 2008 for him to file his further submissions on or before 2 December 2008, in the event that he wished to do so. No further submissions were received.

- 1.3 Having considered the written submissions before me, I find it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant submitted that he was a contributing member of the respondent from 22 April 1997 until 18 March 2002. Upon being promoted from 19 March 2002, he contributed to Sentinel Mining Industry Retirement Fund (“Sentinel”) until he left service on 31 May 2006.

[3] COMPLAINT

- 3.1 The complainant submits that he was retrenched in May 2006.
- 3.2 The complainant alleged that he did not receive his withdrawal benefit from the respondent and that he was not told that if he fails to claim his withdrawal benefit from the respondent within six months, he will not access it until his retirement age.
- 3.3 The complainant is requesting this Tribunal to investigate this matter.

[4] RESPONSE

- 4.1 The respondent submitted that the complainant was a contributing member of the respondent from 22 April 1997 until 18 March 2002.
- 4.2 The respondent further submitted that upon being promoted from 19 March 2002, he contributed to Sentinel until 2 May 2006 when he left service.
- 4.3 The respondent submitted that the complainant failed to claim a withdrawal benefit after leaving service by virtue of the fact that he was still employed in the mining industry.
- 4.4 The respondent further submitted that the complainant was informed when he took a benefit from Sentinel that he cannot access his fund credit in the respondent until he is eligible for a retirement benefit.
- 4.5 The respondent submitted that when the respondent's structure was converted with effect from 1 March 2003, the complainant was credited with a conversion credit.
- 4.6 The respondent further submitted that the South African Revenue Services ("SARS") insisted that it must close the door on allowing paid-up members to take a withdrawal benefit if they did not claim it by the end of November 2003.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issues for determination are whether or not the respondent failed to comply with its duties in not paying the complainant his withdrawal benefit upon termination of his employment and whether or not the respondent failed to inform the complainant of the consequences of failure to claim his withdrawal benefit within six months of exiting the respondent.

5.2 The respondent in its response submitted that in the case of a member who moved between the respondent and Sentinel, the deemed membership was a consequence of the move and the member could not take a benefit from the previous fund until he left service altogether, that is, ceased contributing to either fund. By implication therefore a withdrawal benefit may be taken from the respondent since the complainant has left service completely.

5.3 *In casu*, the complainant left the service on 31 May 2006 and was paid his withdrawal benefit by Sentinel. The complainant ceased contributing to the respondent on 18 March 2002. Rule 21(1) that was applicable at the time that the complainant was promoted provides as follows:

“Every employee in the service of an employer on the fixed date shall, as from the fixed date, and every person subsequently becoming an employee shall, as from the date of becoming an employee, become a member of the Fund.

Subject to the provisions of paragraphs (2) and (4) of Rule 23, a member shall not be permitted to withdraw from membership of the Fund while he remains in the service of an employer.”

Accordingly at that time, since the complainant was still in the service of the employer, he could not receive his withdrawal benefit.

5.4 The complainant left the service of his employer altogether on 31 May 2006, and therefore according to the respondent’s response, he can be paid his withdrawal benefit from the respondent together with fund growth thereon.

5.5 In dealing with the last issue for determination, section 7C(2) of the Act reads as follows:

“In pursuing its objects the board shall –

- (a) take all reasonable steps to ensure that the interests of members in terms of the rules of the fund and the provisions of this Act are protected at all times, especially in the event of an amalgamation or transfer of any business contemplated in section 14, splitting of a fund, termination or reduction of contributions to a fund by an employer, increase of contributions of members and withdrawal of an employer who participates in the fund;
- (b) act with due care, diligence and good faith;
- (c) avoid conflicts of interest;
- (d) act with impartiality in respect of all members and beneficiaries.”

5.6 Section 7D deals with the duties of the board of a fund, one of which is to ensure that adequate and appropriate information is communicated to the members of the fund informing them of their rights, benefits and duties in terms of the rules of the fund (section 7D(c)).

5.7 Some guidance can be obtained from Circular PF No. 130 issued on 11 June 2007, after the complaint was lodged. Even though Circular PF No. 130 was issued after the complaint was lodged, it contains good principles of good governance. It provides that a communication policy should be established for the disclosure of fund information to members and beneficiaries. It further provides that such communication should be appropriate, timely, accurate, complete, consistent, cost-effective, useful, comprehensible and accessible. Communication to members and beneficiaries should be informative, transparent and fair and display accountability. This should include information in respect of the operations, administration and investments of the fund. The Circular recommends that

a communication policy should include (but is not restricted) to the following:

Operating activities:

- Benefit calculations, method and timing of benefit payments;
- Changes to the rules of the fund;
- Important changes to regulatory requirements.

5.8 The complainant submitted that he was not informed of the consequences of not claiming his withdrawal benefit within six months of his exit from the respondent. As a result, he did not make a decision regarding his pension benefits and therefore his benefits may no longer be withdrawn prior to him reaching retirement age. It was an active option which was taken away from members, which makes it necessary for the respondent to communicate this to the member.

5.9 *In casu*, the complainant was entitled to sufficient information to enable him to make an informed decision as to whether to transfer or withdraw his pension benefits or have his benefits locked in until retirement age. The board of management had a duty to communicate the taking away of the active option to the member.

5.10 This complaint is similar to a number of complaints previously determined by this Tribunal, in which relief was granted: see *AN Mtshixa v Mine Employees Pension Fund* (PFA/GA/4008/2005); *A Erasmus v Mine Employees Pension Fund* (PFA/GA/3081/2005, 14 January 2011); *P C Rieper v Mine Employees Pension Fund* (PFA/MP/11528/2006, 28 February 2011); *S K Tsoeute v Mine Employees Pension Fund*

(PFA/FS/35468/2009, 13 July 2011); *C T Christie v Mine Employees Pension Fund* (PFA/NC/37509/2009 20 June 2011

[6] **ORDER**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The respondent is directed to pay the complainant his withdrawal benefit, less any permissible deductions in terms of the Act, plus the member's fund growth to date of payment within 14 days of receipt of this determination.

DATED AT JOHANNESBURG ON THIS 19TH DAY OF AUGUST 2011

DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

Cc: Mine Employees Pension Fund
P O Box 61172
MARSHALLTOWN

2107

Ref: G Meyer

Fax: 011 481 8196

Registered address of the fund:

32 Princess of Wales Terrace

Sunnyside Park

PARKTOWN

2193

Section 30M filing: Magistrates' Court

Parties: Unrepresented