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REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO 24 of 1956 (“the Act”): F ROBERTSON (“complainant”) v CONTRACT CLEANING NATIONAL PROVIDENT FUND (“first respondent”) AND NBC FUND ADMINISTRATION SERVICES (PTY) LIMITED (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the alleged underpayment of a withdrawal benefit upon the complainant’s exit from the first respondent.
- 1.2 The complaint was received by this office on 4 February 2009. A letter acknowledging receipt thereof was sent to the complainant on 4 March 2009. On 5 February 2009, a letter was sent to the second respondent informing it about the complaint and giving it until 6 April 2009 to respond to the complaint. A response was received from the second respondent on 2 July 2009. No further submissions were received.

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)

- 1.3 Having considered the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

[2] FACTUAL BACKGROUND

- 2.1 The complainant was a member of the first respondent by virtue of his employment with Swartland Skoonmakers CC (“the employer”). The complainant’s membership of the first respondent commenced on 1 December 2001 until 31 August 2008 when he exited the first respondent.
- 2.2 Upon the complainant exiting the first respondent, a withdrawal benefit became due and payable to him in terms of the rules of the first respondent. Payment of the withdrawal benefit amounting to R9 633.95 was made to the complainant on 22 December 2008.

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the amount that he received as his withdrawal benefit. The complainant is of the opinion that his withdrawal benefit amounts to R36 000.00, which amount he submits was reflected on the termination form that he completed when he exited the first respondent.
- 3.2 Further, the complainant submits that the employer’s contributions were not factored in when his withdrawal benefit was calculated.

[4] RESPONSE

Second respondent’s response

- 4.1 In its response, dated 2 July 2009, the second respondent in its capacity as administrator of the first respondent confirmed that the complainant had been a member of the first respondent. The second respondent submitted that the complainant's withdrawal benefit was paid into his Nedbank account on 22 December 2008.
- 4.1 The second respondent submitted that the R36 000.00 that the complainant avers is due and payable to him is in fact his annual salary, which appears on the first computer screen for his records. The complainant's withdrawal benefit amounts to R9 633.95.
- 4.2 With regards to the complainant's complaint that the employer's contributions were not factored in when his withdrawal benefit was calculated, the second respondent submitted that both the employer and employee contributed at a rate of 5.25% towards the retirement of the member. The first respondent then deducts costs of insured benefits and administration costs from the employer contributions and the rest is paid towards the member's retirement benefit.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issue to be determined is whether or not the complainant received his full withdrawal benefit upon his exit from the first respondent.
- 5.2 The complainant avers that his withdrawal benefit amounts to R36 000.00 and that the second respondent did not take the employer's contributions into consideration when calculating his withdrawal benefit. The second respondent has submitted that the complainant was paid his full and final withdrawal benefit when he exited the first respondent.
- 5.3 The primary aim of a pension fund is to provide for workers' retirement benefits, but often members leave a fund before retirement, and in

these circumstances a withdrawal benefit will be payable in terms of the fund rules. Members of a fund are entitled to their minimum withdrawal benefit upon exiting a fund and this benefit is calculated in terms of the rules of the fund. A withdrawal benefit becomes payable when a member leaves a fund by reason other than retirement, a section 14 transfer, disability or death. A withdrawal benefit will therefore become payable when a member resigns, is dismissed, or is retrenched.

- 5.4 The first respondent's rules provide that upon exiting the fund, a member will become entitled to his/her fund credit. In this regard, rule 7.1 reads thus:

“7.1 Benefit

7.1.1 If a Member who is not qualified to retire in terms of Rule 5 leaves service in circumstances not provided for elsewhere in these Rules or as a result of the expiry of his contract of employment with the Employer, he shall, subject to the provisions of Rule 4.3, become entitled to his Fund Credit at the date of leaving Service plus the Member's share of any credit balance in the Investment Reserve Account payable in terms of Rule 4.4.2.2(c).”

- 5.5 Fund credit is, in turn, defined in the rules of the first respondent as follows:

“Fund Credit' shall mean for any member at any particular date the sum of:

- (a) His contributions made in terms of rule 4.1 , plus
- (b) That part of the contributions made by the Employer in respect of the Member in terms of rule 4.1.2 which is required to be applied towards the Member's retirement benefit in terms of Rule 4.2.2(b); and
- (c) If applicable, any amount transferred and required to be applied in terms of Rule 7.2.2.1; and
- (d) In relation to each Member who was a member of the Previous Fund, any amount transferred to the Fund in terms of Rule 9.1.1; and

- (e) If applicable, any amount transferred and required to be applied in terms of Rule 9.1.2;”

5.6 The rules of a fund are binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming (See *Mbokazi v Textile and Allied Workers Provident Fund and Another* [2002] 3 BPLR 3200 (PFA). In *casu*, a withdrawal benefit comprising both the employer and employees contributions was paid to the complainant on 22 December 2008. The second respondent has furnished this tribunal with a monthly breakdown of both the employer and the complainant's contributions and from this it is evident that the complainant's withdrawal benefit was calculated correctly. The R36 000.00 that the complainant claims is his withdrawal benefit amount is in fact his annual pensionable salary.

5.7 As regards the complainant's complaint that the second respondent did not take into consideration the employer's contributions when calculating his withdrawal benefit, this tribunal takes cognisance of the fact that a portion of the 5.25% employer's contributions went towards the administration costs as well as risk cover. The complainant had funeral cover, Group Life Assurance cover and Capital Disability cover; the costs of which were funded by the employer's portion of the contributions. This tribunal therefore finds that the complainant has received his full and final withdrawal benefit and that no further benefit is payable to him.

[6] ORDER

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

DATED AT JOHANNESBURG ON THIS THE 19TH DAY OF OCTOBER 2011

DR. EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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2017

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Section 30M filing: Magistrate's Court
Parties: Unrepresented