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Dear Madam,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 (“the Act”): REA BURT (“complainant”) v STANDARD BANK
GROUP RETIREMENT FUND (“respondent”)**

[1] INTRODUCTION

- 1.1 The complaint concerns the extension of the complainant’s normal retirement age from 60 to 63 years.
- 1.2 The complaint was received by this Tribunal on 19 January 2012. A letter acknowledging receipt thereof was forwarded to the complainant on 8 February 2012. On the same date, a letter was dispatched to the respondent giving it until 8 March 2012 to file its response. The respondent filed its response on 8 March 2012. The response was forwarded to the complainant on 24 May 2012. Further submissions were received from the complainant on 29 May 2012.
- 1.3 After considering the submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts

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are known to the parties, they will be repeated only to the extent that they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant was employed by Standard Bank Group Limited (“employer”) on 1 April 1986. She acquired membership of the respondent by virtue of her employment. At the time of her joinder of the respondent’s membership, the normal retirement age for female members was 60 years. This was later changed to 63 years. However, female members who joined the respondent when the normal retirement age for their category was 60 years had to exercise their option and elect whether or not to extend their normal retirement age to 63 years. During 2012, the complainant was advised of her impending retirement from the respondent with effect from 30 April 2012, at the age of 60 years.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the fact that she has to retire from the respondent with effect from 30 April 2012. She submits that when offered an opportunity to extend her retirement age from 60 to 63 years, she chose to extend it. She did this by completing and forwarding the relevant documentation to the employer’s head office. However, in 2008/2009, the complainant became aware that her normal retirement age had not been extended to 63 as requested. She then reapplied for extension of her retirement age in 2011 and the employer declined her request. She submits that she did not have to reapply in 2011 as she had already elected to retire at the age of 63 “years ago”. The employer cannot locate the necessary documents. She submits that she offered to take a polygraph test to prove that she had indeed elected to retire at the age of 63 years but this was

declined by the employer. She submits that she wishes to work to the age of 63 years as she has a right to do so. She submits that for many years she believed she would be retiring at the age of 63 years.

- 3.2 The complainant seeks an order that she be allowed to continue working to the age of 63 years.

[4] RESPONSE

- 4.1 The respondent submits that the complainant was categorised as a “Female C member” when she joined. The complainant alleges that she elected to become a “D” member and as such, her retirement age should be 63 years. The complainant is under the mistaken belief that if her normal retirement age was 63 years, she would automatically be able to continue work for the employer until the age of 63 years. She also assumes that the respondent’s rules drive the contract of employment between the employer and employee and that they override the employer’s decision to permit continued service beyond a certain age.
- 4.2 Fund rules define members’ normal retirement ages. However, an employee can only remain a member until a later retirement age if the employer grants her a contract extension in this regard. In terms of the Old Rules, a Female C member’s normal retirement age was 60 years. She could become a “D” member in which case she shall, twelve months after the date of which the fund acknowledges receipt of her election, cease to be a “C” member and her normal retirement age shall be 63 years. Based on the correspondence provided by the complainant, the employer did not consent to the continuance of the complainant’s service period to 63 years. The respondent cannot challenge this as the employer’s consent is required.

- 4.3 The complainant also alleges that she elected to become a D member when this option opened to members. However, she could not provide the acknowledgment that the respondent would have sent to all Female C members who chose to become D members. She also cannot provide a copy of the option form she claims to have sent to the respondent. The respondent has kept copies of all option forms received from Female C members during 1997 and 2000 when the option was given to these members to become D members. Having thoroughly checked these, it can be confirmed that the complainant's election was not received. The respondent's records do not record the complainant as having been a D member. Female C members could receive their full benefits at the age of 60 years and this was advantageous. No spouse's pension was payable by the respondent on the death of a Female C member. Many Female C members opted to remain in the C category as they believed it had more advantages than disadvantages.
- 4.4 The offer to convert to D members was essentially for Female C members to choose a spouse's pension on condition that they worked another three years in order to build up the funding of the additional benefit. The complainant alleges that she only became aware that her normal retirement age had not been extended to 63 years in 2008/2009. The respondent issues benefit statements to members every six months. The statements reflect a member's normal retirement age. The complainant received these over the years and did not take the issue up with fund administrators. The complainant was offered an opportunity to become a defined contribution member which she accepted. The communication sent to her in this regard reflected her normal retirement age. She chose to convert to a defined contribution fund and being a Category C member, she received a higher conversion offer. This offer was considerate of her normal retirement age of 60 years. On choosing to convert to a defined contribution member, the complainant became a Category F member

and in terms of the Rules, her normal retirement age is that which applied to her original contract of employment (60 years).

[5] DETERMINATION AND REASONS THEREFOR

5.1 This Tribunal must determine whether or not the complainant must be allowed to remain a member of the respondent until her attainment of the age of 63 years.

5.2 It is common cause that the complainant joined the respondent as a Female "C" member on 1 April 1986. Rule 26.4 of the applicable rules regulates the normal retirement age of this category of members and provides that:

"The normal retirement age of a female "C" shall be 60 years.

Such a member may, with the consent of her employer

26.4.1 retire at or after the age of 55 years or continue in the service beyond the age of 60 years on a year to year basis, but not beyond the age of 63 years; or

26.4.2 elect to become a "D" member in which case she shall, twelve months after the date on which the fund acknowledges receipt in writing of her election, cease to be a "C" member and her normal retirement age shall be 63 years."

5.3 Therefore, the normal retirement age that was applicable to this category of members was 60 years. However in terms of the rules, a member in this category could elect to retire at the age of 63 years, provided the employer consented to such a proposed retirement age. Upon receipt of a member's election in this regard, the respondent would issue a letter acknowledging receipt thereof and the complainant's conversion to a "D" member would commence twelve months from the date of such acknowledgement. The complainant

submits that when offered an opportunity to extend her normal retirement age from 60 years to 63 years, she elected such an extension, thus becoming a category D member. However, the respondent denies ever receiving documentation from the complainant wherein she conveyed her intention to convert to a category D member.

- 5.4 Nothing in the submissions placed before this Tribunal indicates that the complainant informed the respondent of her intention to convert to a “D” member and that the respondent subsequently acknowledged receipt of such an election. Both the respondent and the complainant have no copies of the documents the complainant alleges to have sent to propose her conversion from a “C” to a “D” member. Therefore, this Tribunal found no proof of the alleged election and cannot find that the complainant in fact elected to become a “D” member.
- 5.5 Furthermore, this Tribunal notes that in claiming that her normal retirement age ought to be 63 years, the complainant does not allege that the employer consented to her request to become a “D” member. Apart from the fact that such consent is required by the respondent’s rules, the employer would in any event have to consent to any extension of the complainant’s retirement age to 63 years since it indirectly means her contract of employment must also be extended. This is because the complainant cannot be a member of the respondent without a valid contract of employment.
- 5.6 In her complaint, the complainant submits that her request to extend her employment to the age of 63 years was “declined” by the employer. The respondent also confirmed this. This indicates that the employer did not consent to the extension of her normal retirement age from 60 to 63 years. Because the employer did not consent to her request, the provisions of Rule 26.4 have not been fulfilled. Therefore,

the complainant's membership of the respondent cannot be extended as requested.

[6] ORDER

6.1 In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 6th DAY OF AUGUST 2012

**MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR**

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