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BY REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 ("the Act"): DJ DE BEER ("complainant") v ENGINEERING INDUSTRIES PENSION FUND ("first respondent") AND METAL INDUSTRIES BENEFIT FUNDS ADMINISTRATORS ("second respondent")

[1] INTRODUCTION

1.1 The complaint concerns the refusal of the first respondent to transfer the complainant's fund value to an investment vehicle with Old Mutual Life Assurance Company (SA) Ltd ("Old Mutual").

1.2 The complaint was received by this Tribunal on 8 March 2012. A letter acknowledging receipt thereof was sent to the complainant on 15 March 2012. On the same date a letter was dispatched to the respondents giving them until 16 April 2012 to file a response to the complaint. A response on behalf of the respondents was received on 13 April 2012. The response was forwarded to the complainant on 4 May 2012. No further submissions were received from the parties.

1.3 Having considered 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 BAE Systems – Land Systems SA (Pty) Ltd ("the employer") and is a member of the first respondent. On 7 December 2011 the complainant sent a letter to the first respondent in which he informed it that he would be retiring from the fund. He also requested that his pension benefit be transferred to an investment portfolio with Old Mutual.

2.2 On 8 December 2011 the first respondent advised the complainant that a transfer of his pension benefit is not allowed in terms of its rules as he has already reached the age of 65 years.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the refusal of the first respondent to transfer his pension benefit as requested. He contends that he wants to transfer his fund value to Old Mutual in order to be able to choose his monthly income and investments funds.

3.2 Therefore, the complainant requests this Tribunal to order the first respondent to transfer his pension benefit to Old Mutual as he had requested.

[4] RESPONSE

4.1 The second respondent states that the first respondent's rules do not allow a transfer of a member's benefit once the member has reached the retirement age. The rules provide for two benefit options to a member who has reached his retirement age, i.e. a full monthly pension or a lump sum of up to one-third of the retirement benefit with a reduced monthly pension.

4.2 It referred to rule 6 of the first respondent's rules, which reads as follows:

> "6(c) The Pension payable to a Member on retirement at Retirement Age shall be as follows:-
>
> (iii) 2% of the Member's average annual Pensionable Remuneration during the best three consecutive years within the last fifteen years of Service, multiplied by the number of years of Continuous Service (including fractions of a year) from the date of commencement of Continuous Service to the Retirement Age.
>
> (e) A MEMBER on retirement may elect to commute for a lump sum cash payment:-
>
> (i) the whole of his PENSION if it does not exceed the limit set by the relevant legislation from time for full commutation of pension. In this event the ELIGIBLE SPOUSE'S PENSION under Rule 6(h)(iii) shall not be payable;
>
> or
>
> (ii) If his PENSION exceeds the limit referred to in (i), not more than one-third of the PENSION, may be communted.
>
> (f) PENSION payable in terms of these Rules shall be payable monthly, the first payment being made at the end of the month following the month in which the MEMBER retires."

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issue for determination is whether or not the first respondent's refusal to transfer the complainant's pension benefit is in compliance with its rules.

The fund's rules and the complainant's entitlement

5.2 The complainant can only transfer his pension benefit if this is allowed in terms of the first respondent's rules. The complainant is bound by the first respondent's rules as a member of the fund (see section 13 of the Act). The fund and its board of management are also bound to act in terms of the rules (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA)).

5.3 Rule 6 of the first respondent's rules regulate the payment of retirement benefits. Rule 6(a)(i) reads as follows:

> "(i) Any MEMBER who reaches RETIREMENT AGE shall be entitled to receive a PENSION in accordance with the RULES; provided that a MEMBER may elect to retire at any time after reaching age 55 and receive a reduced PENSION determined by the ACTUARY by reference to his Pensionable Credits and age at retirement."

5.4 The rules define "retirement age" as the age of 65 years. Thus, a member who has reached the retirement age of 65 year shall be paid a pension in terms of the rules. The rules make no provision for a transfer of a member's fund value to another investment vehicle once the member has reached the retirement age.

5.5 In terms of rule 6(e) a retiring member may elect to commute for a lump sum cash payment the whole of his pension if it does not exceed the limit set by the relevant legislation from time to time. A retiring member also has the option of taking not more than one-third of his pension benefit in cash if his pension exceeds the limit set by the Income Tax Act, 58 of 1962 ("the Income Tax Act"). The complainant's benefit exceeded the R75 000.00 limit for a full cash commutation as stipulated in the definition of a "pension fund" in the Income Tax Act.

5.6 The facts indicate that the complainant reached the retirement age of 65 year in August 2011. He was entitled to exercise an option of either taking a cash commutation of up to one-third of his pension with a reduced pension, or receiving a full monthly pension with the total amount of his retirement value. The first respondent, as a registered fund, is bound to pay the complainant a pension upon his retirement. The rules do not allow for a transfer of a member's retirement value to an investment vehicle with another insurer once a member has reached his retirement age.

5.7 In terms of the fund's rules the complainant is entitled to receive a monthly pension from the first respondent, which is payable for the rest of his life (see rule 6(g)). He has the option to commute for a cash lump sum up to one-third of his retirement value. This is allowed in terms of paragraph *(dd)* of the definition of a "pension fund" in the Income Tax Act, which reads as follows:

> "(dd) that no more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R50 000 or where the employee is deceased."

5.8 The submissions indicate that the first respondent acted in terms of its

rules in refusing to transfer the complainant's pension benefit to Old Mutual. The complainant, as a member and a person whose benefit is derived from the rules, is also bound by the fund's rules.

5.9 In light of the submissions, this Tribunal is satisfied that the first respondent did not contravene its rules. In terms of the rules the complainant is entitled to receive a pension from the first respondent as he has reached his retirement age.

[6] ORDER

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

DATED AT JOHANNESBURG ON THIS 21ST DAY OF JUNE 2012

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MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

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No legal representative