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Please quote our ref: **PFA/EC/9538/2012/LPM**

PER REGISTERED POST

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 (“the Act”): MJ DONGA (“complainant”) v MINEWORKERS
PROVIDENT FUND (“respondent”)**

[1] INTRODUCTION

- 1.1 The complaint concerns the non-payment of an incapacitation benefit.
- 1.2 The complaint was received by this Tribunal on 28 November 2011. A letter acknowledging receipt thereof was forwarded to the complainant on 13 January 2012. On the same date, a letter was dispatched to the respondent giving it until 13 February 2012 to file its response. The respondent did not file a response despite being requested to do so. No further submissions were received from the parties.
- 1.3 After considering the submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties, they will be repeated only to the extent that

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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 Anglo Platinum Limited (“employer”) from 1982 until he was discharged from service on medical grounds on in October 2009. By virtue of his employment, he was a member of the respondent, a registered pension fund organisation in terms of the Act. Upon leaving service, the complainant became entitled to payment of an incapacitation benefit.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the non-payment of an incapacitation benefit by the respondent. It is submitted that to date, no incapacitation benefit has been paid to him. The complainant is also dissatisfied with the non-payment of “long service” funds by the employer. An order that the respondent pay the complainant’s incapacitation benefit and that the employer pay him long service money, is sought from this Tribunal.

[4] RESPONSE

4.1 The respondent was given an opportunity to file its response to the complaint. To date, no response has been received in this regard.

[5] DETERMINATION AND REASONS THEREFOR

Non-payment of Incapacitation benefit

- 5.1 This Tribunal must determine whether or not the respondent has unreasonably failed to pay an incapacitation benefit after the complainant left service, when it in fact had an obligation to pay such a benefit without inordinate delays.
- 5.2 In terms of section 30F of the Act, when this Tribunal intends conducting an investigation into a complaint lodged with it, it must afford the party or parties against whom the allegations in the complaint are made an opportunity to comment thereon. In pursuance of this provision, this Tribunal dispatched a letter to the respondent giving it an opportunity to file a response to the complaint. No response was received from the respondent. Therefore, this Tribunal must determine the matter on the submissions placed before it. In order for the complainant to succeed with his claim, a *prima facie* case must be made out that an incapacitation benefit is payable by the respondent and it has failed to pay the benefit.
- 5.3 The submissions placed before this Tribunal indicate that the complainant was employed by the employer and was a member of the respondent. He states that he went on “early retirement” due to “sickness”. The complainant was 54 years when he left service in 2009. The earliest age at which he could go on early retirement is 55 years in terms of the Income Tax Act, 58 of 1962. Because he was below the age of 55 years, it appears that the complainant left employment due to incapacitation and not early retirement. Rule 26(1) of the respondent’s rules regulates the payment of benefits in such instances and provides that:
- “(1) A Member who satisfied the Trustees that:
- (a) he is permanently unfit to continue in or to resume employment in the category of work on which he has been employed in the Service of an Employer; and

- (b) he is permanently unfit to continue in or to resume employment in any other category of work for which the Chamber minimum annual basic Wages are greater than or equal to those for the category of work in which he has been so employed

shall be entitled to a Full Benefit plus his Member's Voluntary Portion and Member's Transfer Portion."

- 5.4 Therefore, upon leaving service, the complainant became entitled to payment of an incapacitation benefit that is equal to his Full Benefit plus transfer values with interest (if any) and additional voluntary contributions with interest (if any). The complainant has made out a *prima facie* case that he was a member of the respondent and that an incapacitation benefit is payable to him by the respondent.
- 5.5 The respondent has not filed a response to the complainant. After a careful consideration of the circumstances of the matter, this Tribunal found no evidence that the respondent ever paid the incapacitation benefit that is due to the complainant. No reasons were provided by the respondent for the non-payment of the benefit. Therefore, the complainant has made out a *prima facie* case that the respondent has failed to pay the benefit. The complainant is entitled to the relief sought against the respondent.

Non-payment of long service money

- 5.6 The complainant also complained that the employer had failed to pay him his long service money. This Tribunal was established in terms of Chapter VA of the Act to hear complaints against pension fund organisations. The nature of the complaints upon which it may exercise jurisdiction is specifically set out in section 1 of the Act. Such a complaint must relate to a pension fund organisation and concern its administration, the investment of its assets or the interpretation and application of its rules. It should further allege that a decision taken by

such a fund in terms of the Rules was in excess of its powers; or the complainant has sustained or may sustain prejudice in consequence of maladministration of the fund; or a dispute of law or fact has arisen between the fund and the complainant; or that a participating employer has failed to fulfil its duties in terms of the rules.

- 5.7 Because this part of the complaint is directed at the employer, it must specifically allege that the employer has failed to fulfil an obligation in terms of the rules in relation to the respondent. This part of the complaint does not relate to the administration of the respondent, the investment of its assets or the interpretation and application of its rules. Because the respondent's rules make no provision for payment of long service money, it further does not allege that the employer has failed to fulfil its obligations in terms of the rules. Therefore, this part of the complaint is not a complaint as defined in the Act and this Tribunal has no jurisdiction to hear it. To the extent that the complaint relates to unpaid long service money, it is dismissed.

[6] ORDER

- 6.1 In the result, this Tribunal makes the following order:

6.1.1 The respondent is ordered to calculate the incapacitation benefit that is due to the complainant in terms of its rules and pay the benefit to him, less any permissible deductions in terms of the Act, within three weeks of the date of this determination.

6.1.2 The benefit to be paid in terms of paragraph 6.1.1 above must be paid together with interest thereon computed at the rate of 15.5% *per annum* from 31 October 2009 to the date of payment.

DATED AT JOHANNESBURG ON THIS 12TH DAY OF NOVEMBER 2012

MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M filing: Magistrate's Court

Parties Unrepresented