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REGISTERED POST

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): B NGOVENI (“complainant”) v MUNICIPAL EMPLOYEES PENSION FUND (“first respondent”); AKANI RETIREMENT FUND ADMINISTRATORS (PTY) LTD (“second respondent”) AND CITY OF TSHWANE METROPOLITAN MUNICIPALITY (“third respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the delay in the payment of a withdrawal benefit to the complainant by the first respondent following her exit from service.
- 1.2 The complaint was received by this Tribunal on 30 May 2016. A letter acknowledging receipt of the complaint was sent to the complainant on 6 June 2016. On the same date, the complaint was dispatched to the respondents requesting them to file their responses by 6 July 2016. On 11 July 2016, follow-up letters were sent to the respondents requesting them to file their responses by 25 July 2016. On 22 September 2016, a response was received on behalf of the first and second respondents.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 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)

On 27 September 2016, this Tribunal received telephonic submissions from the complainant. No response was received from the third respondent.

- 1.3 Having considered the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant was employed with the third respondent from 1 July 2014 to 31 July 2015. She was a member of the first respondent by virtue of her employment. The second respondent is the administrator of the first respondent.
- 2.2 Following her exit from service, the complainant became entitled to receive a withdrawal benefit in terms of the rules of the first respondent. However, no benefit has been paid to the complainant to date.

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the delay in the payment of her withdrawal benefit. She stated that she joined the first respondent in 2008 and has been employed by three different municipalities, namely, Greater Taung Municipality, Ba-Phalaborwa Municipality and the third respondent. She indicated that she resigned from the third respondent on 31 July 2015 and has not received her withdrawal benefit despite submitting claim forms.
- 3.2 The complainant submitted that she has communicated with several employees of the first respondent to no avail. She indicated that she was informed to resolve tax issues with the South African Revenue

Services (“SARS”) and the issue was resolved after she contacted SARS. She provided a copy of a benefit statement dated 31 October 2013 which indicates that she joined the first respondent on 1 August 2008.

- 3.3 The complainant requests this Tribunal to order the first respondent to pay her withdrawal benefit and a statement explaining the computation of the benefit.

Complainant’s further submissions

- 3.4 The complainant stated that she completed and submitted claim forms to the third respondent in July 2015 when she left her employment. However, she indicated that the third respondent lost her claim forms and she had to re-submit the claim in October 2015. She submitted that the third respondent did not assist her when she needed help in claiming her benefit.

[4] RESPONSE

First and second respondents

- 4.1 The second respondent confirmed that it has received a complaint from the complainant. It indicated that the complainant’s file is currently sitting before the board of management for approval. The second respondent submitted that it cannot confirm the actual date of finalisation of the file and it will endeavour to expedite all files before the board.

Third respondent

- 4.2 The third respondent was afforded the opportunity to comment on the allegations made against it as required in terms of section 30F of the

Act. However, it failed to file a response. In the circumstances, this Tribunal will adjudicate the matter on the basis of the available submissions.

[5] **DETERMINATION AND REASON THEREFOR**

Introduction

5.1 The issue that falls for determination is whether or not the first respondent failed to comply with its duties in terms of its rules and the Act with regard to the payment of a withdrawal benefit to the complainant.

Payment of a death benefit

5.2 The rules of a fund are supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund (See Section 13 of the Act and *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]).

5.3 Rule 37 of the first respondent's rules regulate the payment of withdrawal benefits upon the resignation or discharge of a member from service. Rule 37(1)(b) reads as follows:

“(1) If a MEMBER resigns from the service of a LOCAL AUTHORITY or is discharged or leaves the service of a LOCAL AUTHORITY in circumstances not elsewhere provided for in these Rules, and –

(a) ...

(b) he became a MEMBER of the FUND after 30 June 1998, he shall be entitled to –

(i) the amount of his CONTRIBUTIONS;
plus

(ii) INTEREST in respect of his PENSIONABLE SERVICE.

multiplied by 1.5 (one comma five) subject to MEMBER minimum benefits.”

5.4 Rule 37(3) states as follows:

“(3) The benefits payable in terms of subsections (1) and (2) shall bear INTEREST, calculated from the date following the resignation, discharge or leaving of service of the MEMBER, to the date of payment of such benefit.”

5.5 The submissions indicate that the complainant left her employment on 31 July 2015 and initially submitted her claim forms to the third respondent in July 2015. However, she alleges that the claim form was lost by the third respondent and she had to re-submit it in October 2015. The third respondent did not file a response to address the complaint, particularly the complainant’s allegations that she was not assisted in claiming her benefit.

5.6 It is trite law that the employer in a pension fund at the very least owes a duty of good faith to its employees (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 235C). It is also essential for the employer to complete a withdrawal notification form indicating the cause of the termination of employment. This, in turn, allows the fund to determine which benefit is payable (see *Rwexwana v Idaho Spur Provident Fund and Others* [2005] 7 BPLR 640 (PFA) at 642D-F). Thus, in the absence a response from the third respondent, this Tribunal concludes that the third respondent failed to comply with its duty of good faith in terms of assisting the complainant to claim her withdrawal benefit within a reasonable following her exit from service.

5.7 The first respondent’s rules are silent with regard to the time period allowed before a benefit is paid to a member. Thus, each case depends

on the facts and what is reasonable in the circumstances (see *Booi v Corporate Selection Retirement Fund* [2013] 3 BPLR 312 (PFA) at 314B-C). The complainant stated that she re-submitted her claim in October 2015 and the first and second respondents acknowledged receipt of the claim. The first respondent stated that the claim is awaiting the approval of the board of management. However, this is not a reasonable justification for the delay in making payment to the complainant having regard to the date the claim was submitted. That the first respondent's Principal Executive Officer can sign off responses like this to this Tribunal leads this Tribunal to question her fitness to discharge her duties as Principal executive Officer. For this reason, this Tribunal is referring this determination to the Registrar of Pension Funds with a request that they consider an enquiry into whether the Principal Executive Officer is a fit and proper person to serve as such in terms of the Act. Thus, this Tribunal concludes that the delay in the payment of the complainant's withdrawal benefit since the submission thereof is unreasonably long. This is more so in that there is no reasonable justification for the delay.

- 5.8 Therefore, the appropriate relief is for the first respondent to be ordered to pay the complainant's withdrawal benefit without any further delay together with interest as stated in rule 37(3) of the first respondent's rules. The first respondent must also be ordered to pay interest on the complainant's withdrawal benefit in terms of the Prescribed Rate of Interest Act 55 of 1975 at the rate of 10.5% *per annum* computed from August 2015 until the date of payment.

[6] **ORDER**

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

- 6.1.1 The first respondent is ordered to pay the complainant her withdrawal benefit in terms of rule 37(1) of its rules together with interest as provided in rule 37(3); plus interest at the rate of

10.5% *per annum* computed from August 2015 to the date of payment, within three weeks of this determination and

- 6.1.2 The first respondent is ordered to provide the complainant with a breakdown of her withdrawal benefit within five weeks of this determination.

DATED AT PRETORIA ON THIS 07TH DAY OF OCTOBER 2016

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M Filing: High Court

Parties unrepresented