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Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): P PRINSLOO (“complainant”) v MINE EMPLOYEES PENSION FUND (“first respondent”) AND SENTINEL MINING INDUSTRY RETIREMENT FUND (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the payment of a spouse’s pension and death benefit by the respondents.
- 1.2 The complaint was received by this Tribunal on 9 April 2013. A letter acknowledging receipt was sent to the complainant on 9 May 2013. On the same date, the complaint was forwarded to the respondents requesting them to file their responses by 10 June 2013. A joint response was received from the respondents on 22 May 2013. No further submissions were received from the parties.

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- 1.3 After considering all 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 is the ex-spouse of the late Mr MV Prinsloo (“the deceased”), who passed away on 14 July 2012. The deceased was employed by Western Holdings Mine (“the employer”) until 30 September 1991. The deceased was a member of both the respondents by virtue of his employment. Following the deceased’s retirement from employment and the respondents on 30 September 1991, he became a pensioner member of the respondents until the date of his death on 14 July 2012.
- 2.2 Subsequent to the death of the deceased, the complainant lodged a claim for the payment of a spouse’s pension and/or death benefit with the respondents. The respondents advised the complainant that no lump sum death benefit is payable and that she is not eligible for a spouse’s pension from them in terms of their respective rules.

[3] COMPLAINT

- 3.1 The complainant is aggrieved by the respondents’ decision to reject her application for the payment of a spouse’s pension as well as lump sum death benefit. She states that she and the deceased were married on 14 November 1963. The deceased retired from employment on 1 October 1991. They divorced after 43 years on 31 July 2006. The deceased passed away on 14 July 2012.
- 3.2 She further states that she claimed for a spouse pension and lump sum death benefit from the respondents in August 2012. She was advised by the respondents that no lump sum death benefit is payable and that she is not eligible for a spouse’s pension from either respondent in terms of

their respective rules. She is of the opinion that because she and the deceased were married for 43 years, she should be entitled to something even though she was not staying with him at the date of his death.

- 3.3 Therefore, the complainant seeks an order directing that she be paid a spouse's pension and the death benefit by the respondents.

[4] RESPONSE

- 4.1 The respondents confirmed the background facts as summarised in paragraph 2 above. The respondents submitted that their structures were converted during the period between the retirement and the death of the deceased. The first respondent was converted on 1 March 2003 and the second respondent on 1 March 2001. The rights and obligations of pre-conversion pensioners were entrenched in an annexure (Annexure 3 in each case) to the revised rules registered on the aforementioned dates. The pre-conversion rules of the respondents provided for a lump sum death benefit on the death of a pensioner. Moreover, the rules of the respondents gave a pensioner an option at retirement or thereafter to convert the lump sum death benefit into an additional pension (see Annexure 3, Rule A3.6 in respect of the first respondent and Annexure 3, Rule 11 in respect of the second respondent). If a pensioner elected to convert the lump sum death benefit into an additional pension, no lump sum death benefit would be payable on his or her death.
- 4.2 The respondents further submitted that their pre-conversion rules provided that a spouse's pension would become payable on the death of a pensioner to a person who qualified as his or her "spouse". These provisions were entrenched in Annexure 3 of their respective rules at conversion (see Annexure 3, Rule A.3.4 for the first respondent and Annexure 3 Rule 5 for the second respondent).

- 4.3 With regards to a lump sum death benefit, the respondents submitted that the deceased elected in respect of both funds to convert his lump sum death benefit into an additional pension and to commute the maximum one-third portion for a lump sum. The complainant who was married to the deceased at the time of retirement co-signed the retirement claim form and declared that on the death of her husband, no lump sum death benefit would be payable. A copy of the deceased's election is attached to the response. As regards the spouse's pension, the respondents submitted that the complainant confirmed that not only did she and the deceased divorce on 31 July 2006, but she also did not co-habit with him thereafter. Therefore, the complainant does not qualify for a spouse's pension from them.
- 4.4 The respondents concluded by submitting that, whilst they empathise with the complainant's situation, she is unfortunately not eligible for a spouse's pension from them and no lump sum death benefit is payable.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The first issue for determination is whether or not the respondents' refusal to pay a spouse's pension to the complainant is justifiable in terms of their rules. The second issue for determination is whether or not the respondents' refusal to pay a death benefit to the complainant is justifiable in terms of their rules.

Spouse's pension

- 5.2 The rules of a fund are paramount and binding on all parties (see *Tek Corporation Provident Fund and Others v Lorentz* 1999 (4) SA 884 (SCA) at 894-B-C and section 13 of the Act). Therefore, in order for the complainant to receive a spouse's pension as a result of the deceased's death, she must qualify to receive the benefit in terms of the respondents' rules.

5.3 When the deceased retired in October 1991, a provision was made for the payment of a “widow’s pension” in Rule 32 $quat$ of the rules of the first respondent. Rule 32 $quat$ of the first respondent’s rules defines a “widow” as the person to whom the pensioner was married throughout the period from the date of retirement to the date of his death. Furthermore, if at any time a man or a woman was living together as husband or wife with a pensioner member and has satisfied the board that he or she was dependent on the pensioner member at the date of his or her retirement, they shall be deemed to be married.

5.4 Upon the conversion of the first respondent’s structure on 1 March 2003, the rules pertaining to benefits and options in respect of pre-conversion pensioners (as in the deceased’s case) were incorporated in Appendix 3 of the first respondent’s rules. Rule A3.4.3, Appendix 3 of the revised rules of the first respondent provides for the spouse’s pension and reads as follows:

“A3.4.3 If a PENSIONER, whose PENSION was awarded on or after 1 April 1982 dies and leaves a SPOUSE, there shall be granted in addition to any other amounts the SPOUSE may be entitled to in terms of this Appendix, and subject to the provisions of (a) and (b) of the definition of “SPOUSE” in this Rule A3.4 a PENSION from the first day of the PAY MONTH following the PAY MONTH in which PENSIONER dies unless otherwise agreed by the TRUSTEES....”

5.5 A “SPOUSE” is defined in Rule A3.4 of Appendix 3 of the revised rules of the first respondent reads as follows:

“(a) the spouse of a PENSIONER at the date of his death; provided that such person was either the PENSIONER’S legal spouse, by whatsoever rites married or was a person with whom the PENSIONER was living in a customary union as recognised in law;

- (b) a person of the same or opposite sex with whom a PENSIONER at the date of his death was cohabiting as if married, whom the TRUSTEES in their discretion may regard as the PENSIONER'S spouse;

provided that:

- (i) such person was a person as specified above when he became a PENSIONER; and
- (ii) if the TRUSTEES become aware of any period when the PENSIONER and his spouse were not cohabiting between the date of the PENSIONER'S retirement and the date of his death, they may either deem the couple:
- (aa) to have been cohabiting throughout the period mentioned in (ii) and in such case award the full SPOUSE'S PENSION payable in terms of Rule A3.4.3; or
- (bb) to have been cohabiting at the date of the PENSIONER'S death and award the SPOUSE'S PENSION payable in terms of Rule A3.4.3 reduced by one-third (1/3);
- (iii) if a person otherwise qualifies as a SPOUSE in terms of (a) and (b) at the date of the PENSIONER'S death but could not be regarded as a SPOUSE throughout the period of his retirement, such person shall be awarded the PENSION payable in terms of Rule A3.4.3, reduced by one-third (1/3 rd.);

and provided further the TRUSTEES at their discretion may decide that:

- (c) a person who otherwise satisfies the requirements of (a) and (b) shall not qualify as a SPOUSE if such person was not living with the PENSIONER at the date of his death;

and

- (d) if two (2) or more persons qualify as the SPOUSE of a PENSIONER in terms of (a) and (b) above, the PENSION shall, at the discretion of the TRUSTEES, be awarded to one (1) of the persons so qualifying or apportioned between some or all of them; provided that should one (1) of the persons so qualifying or apportioned between some or all of them; provided that should one (1) or more of the SPOUSES die, the PENSION that had been awarded to the deceased SPOUSE/S will not be reapportioned amongst the surviving SPOUSE/S”.

5.6 The above rule envisages a spouse to be a person who was married to or cohabited with the deceased pensioner from the date of retirement to the date of death. However, if a person was married to or cohabited with the deceased’s pensioner only at date of his death, i.e. not from date of retirement, he/she shall be awarded a spouse’s pension reduced by one third.

5.7 In the present matter, the submissions show that although the complainant was married to the deceased at the time of his retirement, she was not married to him nor did she cohabit with him at the time of his death since she was divorced from him on 31 July 2006. Therefore, the complainant does not qualify for a spouse’s pension, nor a reduced spouse’s pension, in terms of the above rule of the first respondent.

5.8 With regards to the complainant’s eligibility for a spouse’s pension from the second respondent, Rule 5.3 of Appendix 3 of the revised rules of the second respondent provides for the spouse’s pension and reads as follows:

“If a PRE-CONVERSION PENSIONER whose pension was awarded on or after 1 June 1981 dies and leaves a SPOUSE, there shall be granted in addition to any other amounts the SPOUSE may be entitled to and subject to the provisions of paragraph (a) and paragraph (b) of the definition of “SPOUSE”, a pension payable on the last day of the

month in which the PENSIONER dies, unless otherwise agreed by the TRUSTEES, equal to fifty per cent (50%) of the pension he was receiving or would have been receiving if part of it had not been commuted”.

5.9 A “SPOUSE” is defined in Rule 5.1 of Appendix 3 of the revised rules of the second respondent as follows:

- “(a) the spouse of an PRE- CONVERSION PENSIONER at the date of his death; provided that such person was his legal spouse, by whatsoever customary rites or legally married as recognised in law;
- (b) a person of the same or opposite sex who was co- habiting as if married and who was dependent on the PRE- CONVERSION PENSIONER at the date of his death, and whom the TRUSTEES in their discretion may regard as his spouse; and
- (c) was a spouse as specified in paragraph (a) or paragraph (b) when the PRE- CONVERSION PENSIONER retired; and if the TRUSTEES become aware of any period when the PRE- CONVERSION PENSIONER and his spouse were not co- habiting between the date of his retirement and the date of his death, they may either deem the couple:
 - (i) to have been co- habiting throughout the period between the date of the PRE- CONVERSION PENSIONER’S retirement and death and in such case award the full spouse’s pension payable in terms of Rule 5.3 below; or
 - (ii) not to have been co- habiting during this period and not to award the spouse’s pension payable in terms of Rule 5.3 below;

and provided further the TRUSTEES at their discretion may decide that:

- (d) if two or more persons qualify as the SPOUSE of a PRE-CONVERSION PENSIONER in terms of paragraph (a) and/ or paragraph (b) above, the pension shall, at the discretion of the TRUSTEES, be awarded to one of the persons so qualifying or apportioned between some or all of them; provided that should one or more of the SPOUSES die, the pension that had been awarded to the deceased SPOUSE/S will not be reapportioned among the surviving SPOUSE/S”.

- 5.10 The above rule does not provide for a spouse’s pension if the person was not married to or cohabited with the deceased from the date of retirement to the date of death. For the complainant to qualify for the spouse’s pension, she must have been married to the deceased throughout his retirement until his death. In the present matter, although the complainant was married to the deceased at the time of his retirement, this marriage was dissolved in July 2006. Thus, since the complainant was not married to the deceased throughout his retirement until his death, she does not satisfy the requirements of the above rule.
- 5.11 With regards to the payment of the death benefit, the pre-conversion rules of the respondents provided for a lump sum death benefit on the death of a pensioner. These rules were incorporated in Appendix 3 of the respondents’ revised rules. Rule A3.5.2 of Appendix 3 of the revised rules of the first respondent as well as Rule 10 of Appendix 3 of the revised rules of the second respondent provide for a lump sum death benefit payment on the death of a pensioner. Moreover, Rule A3.6 of Appendix 3 of the revised rules of the first respondent as well as Rule 11 of Appendix 3 of the revised rules of the second respondent provide that if the pensioner elected to convert the death benefit into an additional pension, no lump sum death benefit would be payable on his or her death.
- 5.12 The documentary evidence submitted indicates that the deceased was given an option to elect either to retain the death benefit in respect of either respondent, or to convert the death benefit into an addition

pension. The deceased elected in respect of both respondents to convert his lump sum death benefit into an additional pension. It follows that no death benefit is payable by the respondents following the death of the deceased since he elected to convert his lump sum benefit into an additional pension. Therefore, the respondents are correct in their contention that no death benefit is payable by either of them.

[6] **ORDER**

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

DATED AT PRETORIA ON THIS 23RD DAY OF OCTBER 2013

MA LUKHAIMANE
PENSION FUNDS ADJUDICATOR

Section 30M filing: High Court

Parties unrepresented