

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: **PFA/GA/1220/00/KM**

In the complaint between:

M.P.MANYONI

Complainant

and

**METAL INDUSTRIES PROVIDENT FUND
CARRARA MNF CC**

**First Respondent
Second Respondent**

**PRELIMINARY DETERMINATION IN TERMS OF SECTION 30J OF THE PENSION
FUNDS ACT OF 1956**

1. This is a complaint brought in terms of section 30A of the Pension Funds Act 24 of 1956 hereafter referred to as the “Act” concerning the question of whether the complainant was in fact a member of the first respondent and accordingly eligible for a withdrawal benefit on termination of his employment.
2. The complainant is Mr M.P.Manyoni, a former employee of the second respondent.
3. The first respondent is the Metal Industries Provident Fund (hereafter referred to as the “fund”), a defined contribution duly registered under the Act.
4. The second respondent is Carrara MNF cc (hereafter referred to as the “employer”), the former employer of the complainant and a participating employer in the respondent fund. As will appear from the circumstances set out below, the employer has not until now been a party to these proceedings, although it is clear that it has some interest in the subject matter of this determination. For that reason I deem it advisable to join it as the second respondent in these

proceedings, and to proceed by way of a preliminary determination. This will afford the employer the opportunity to make submissions for consideration in the formulation of a final determination in this matter.

5. The complainant is assisted by the Black Sash Trust in this matter, while the first respondent acts on its own behalf. The second respondent, on account of the circumstances outlined above, is as yet unrepresented.
6. No hearing has been held in this matter. An investigation under my supervision was conducted by my assistant adjudicator, Karin Mackenzie. Accordingly, in determining this matter, I have relied exclusively on the documentary evidence and written submissions gathered during the course of our investigations.
7. At the outset I wish to state that the information supplied by both parties has been pitifully inadequate. The complaint leaves one in the dark as to the complainant's age, occupation, date of commencement of employment, date of termination of employment, reason for termination of employment and much else besides. The response from the fund, on the other hand, consists of a meagre three sentences, the first of which is devoted to an acknowledgment of a letter from our offices. I wish to take this opportunity to remind litigants that in the nature of these disputes, which very often pertain to questions of law rather than fact, it is often the papers that are decisive in the adjudication process. For this reason, it is both time-consuming and an unnecessary waste of the resources of this office when information has to be specifically elicited which should very obviously have been included in the initial formulation of the dispute. Having said this, in the present case I am of the view that, notwithstanding the factual gaps, there is sufficient information before me to sustain a cause of action that can provide the basis for an interim ruling, part of which can be directed at eliciting information which may be necessary to implement any final order in this matter. In this regard, I am moved to come to the complainant's assistance in view of the fact that he is clearly not sophisticated, and it would be unfair to lay the inadequate quality of his representation at his door. I am mindful of the fact that he has already been prejudiced by the time delay in resolution of this matter.

8. I proceed to sketch the background to this matter based on the limited information available. The complainant was employed by the second respondent. For the duration of his employment monthly deductions were made from his salary in respect of contributions to the respondent fund, as evidenced by the attached copies of his salary slips. These slips also speak for the fact that he was employed with the second respondent for the months of June, July and September 1999, thus removing the possibility of time-barring, as his complaint was lodged at these offices in May of the following year. On termination of his employment, the complainant was directed to the offices of the first respondent to collect his pension entitlements. He was advised by one Mr Rajesh, acting on behalf of the fund, that he had never been registered as a member by his employer, and he was consequently not entitled to any benefit.

9. The complainant then lodged a complaint with these offices, in which substantially the above facts are set out, followed by a request for relief set out as follows:

Complainant request the Pension Fund Adjudicator to make an order that the involving party to be responsible and manageable by refunding the complainant his belonging.

In terms of the rules and with the explicit expression of the beneficiary is paid and any other remedy the adjudicator deem it fit and appropriate.

10. This could arguably have been more eloquently formulated, but I take it to mean an alternative request for the refund of contributions from his employer or a benefit under the rules of the fund, and, failing that, any alternative relief that I am competent to grant.

11. The response received from the fund is so frugal that it is best to quote it in its entirety:

We refer to your letter dated 15 November 2000 and do not seem to have received your previous correspondence in this regard.

The above-named has not contributed to our Fund at all but, however, we note that his employer has not contributed to the Fund on behalf of other employees since March 1999.

An agent has been to see this company to demand the contributions due to the Fund and upon receipt of these Mr Manyoni's claim will be progressed.

12. Reading between the lines, a procedure one must perforce resort to, the defence of the fund is either that the complainant is not a member, or that the fund must be excused payment of his benefit until such time as the outstanding contributions have been collected. I turn now to the rules of the fund in order to ascertain whether either of these propositions can be sustained.

13. Eligibility for membership of the fund is governed by rule 1 which reads as follows:

- (1) The following Employees in the Industries shall be eligible for membership:-
 - (i) those classes of Employees who fall within the scope of the industrial Agreement and who elect, or are required, in terms of Section 4 (Membership) of that Agreement to be members of this Fund. (The contents of Section 4 of the Industrial Agreement are contained in Appendix 1 to the Rules);
 - (ii) those other classes of Employees in the employ of the same Employer as the Employer in clause (i) who contribute to the Fund and for whom the Employer makes contributions.

14. The relevant portions of section 4 of the Industrial Council Agreement referred to in the above rule state:

- (1) Each employee falling within the scope of this Agreement on the date of coming into operation hereof, and who was a member of the Pension Fund on the day immediately prior to that date, shall have the choice of remaining a member of the Pension Fund or of becoming a member of the Provident Fund. Such choice shall be made within 18 months of the date of coming into operation of this Agreement and shall be irrevocable. If the employee chooses to become a member of the Provident Fund, his membership shall commence on the day on which his choice is made.
- (2) If an employee to whom (1) applies has not chosen to become a member of the Provident Fund within 18 months from date of commencement of this Agreement he shall continue as a member of the Pension Fund and shall have no further option to join the Provident Fund.
- (3) Each employee who becomes an employee falling within the scope of this Agreement on or after the date of coming into operation of this Agreement shall be required to choose

either to become a member of the Pension Fund or a member of the Provident Fund. Such choice shall be made on the date on which he becomes an employee falling within the scope of this Agreement. Membership of the relevant Fund shall commence on that date.

- (4) If an employee to whom (3) applies does not choose either to become a member of the Pension Fund or a member of the Provident Fund on the date on which he becomes and employee falling within the scope of this Agreement, he shall automatically become a member of the Provident Fund.
15. There are no other rules impacting on the acquisition of membership, and nothing that relates it to or makes it dependent in any way upon the receipt of contributions.
16. It is clear from the above that membership of one of the Union funds in the case of an employee who falls within the scope of the industrial council agreement is automatic. Whether he joins the pension or provident fund depends on his election or the default position. If he fails to elect, he will be a member of the provident fund unless he was already a member of the pension fund at the time that the agreement came into effect. It is also notable in this regard that the deductions made from the complainant's salary were in respect of the provident fund.
17. If membership of the fund is automatic, it matters not whether the fund has received contributions by or on behalf of the member when it comes to entitlement to a benefit. I am of the view therefore that in principle the fund is liable to pay the complainant any benefit flowing from his membership of the fund. On account of the paucity of detail in this complaint, however, I am going to couch this ruling in preliminary terms by issuing a rule *nisi* so that the fund may rebut the finding if appropriate. I also intend to incorporate in the order a directive for the complainant to supply certain information to the fund in order to facilitate the enquiry into the correct benefit to which the complainant may be entitled.
18. My order is accordingly as follows:
 - 18.1 The complainant is hereby directed to furnish the respondents with the following information within 3 weeks of date of this ruling:

18.1.1 The date of his commencement of employment with second respondent;

18.1.2 The date of termination of his employment with second respondent;

18.1.3 The reason for termination of his employment with second respondent;

18.1.4 The salary he earned during the time he was employed by second respondent;

18.2 A rule *nisi* is hereby issued calling upon any party to show cause on or before Friday 11 January why the following order should not be made:

18.2.1 The complainant is hereby declared to be have been a member of first respondent from the date of commencement of his employment with second respondent and entitled to a benefit in terms of the rules of first respondent;

18.2.2 The first respondent is directed to calculate and pay to the complainant the benefit to which he is entitled within 3 weeks of date of this order.

Dated and signed at CAPE TOWN on the 31st OCTOBER 2001

JOHN MURPHY

Pension Funds Adjudicator