

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/489/99/NJ

In the complaint between:

J.S. Forman

Complainant

and

Sage Schachat Pension Fund

Respondent

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF 1956

Introduction

This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956. The complaint concerns the commutation factor used in the calculation of the retirement benefit due to the complainant.

After an exchange of correspondence between the complainant and the respondent, consisting of a number of letters and other documentation, the complainant lodged his written complaint with my office on 12 January 1999. No hearing has been held in this matter. Accordingly, in determining this matter, I have relied exclusively on the documentary evidence and argument put to me in writing and the report placed before me, by my investigator, Naleen Jeram. Mr Jeram also had lengthy telephonic conversations with Mr Codron of Ginsburg, Malan and Carsons, Mr Brown of Alexander Forbes Consultants and Actuaries and Professor Anthony Asher of the Actuarial Science Department of the University of Witwatersrand concerning the actuarial assumptions made

in this matter.

The complainant is Jack Stanley Forman, a former member of the respondent. The complainant is herein represented by Mr Cyril Wides of Cyril & Jonathan Wides Brokers cc.

The respondent is a pension fund duly registered under the Pensions Funds Act of 1956. The administrators of the respondent are Sage Life, Employee Benefits Division.

The Complaint

The complaint relates to the interpretation and application of the rules of the respondent and alleges that the decision of the fund was an improper exercise of its powers.

On 14 February 1964 the complainant commenced employment with Sage Holdings Group, at which point he became a member of the respondent. On 31 July 1997, after attaining the age of 65 years, the complainant elected to retire.

The relevant rule of the respondent applicable to him reads as follows:

8.1 Pensions Formula

The Pension payable to a retiring Member shall be calculated as follows:

Two percent of the Member's Final Pensionable Salary for each year of Future Pensionable Service, plus one percent of the Member's Final Pensionable Salary for each year of Past Pensionable Service.

Final pensionable salary means

the annual Pensionable Salary on the 1st February immediately preceding the Member's normal Retirement Date.

Future Pensionable Service means

- (a) in the cases of Members who immediately prior to the Commencing Date were Members of the Previous Scheme, Service with the Employer from the date of entry into the Previous Scheme to Normal Retirement Date;
- (b) in the case of all other Members, Service with the Employer from date of entry into the Fund for Pension purposes to Normal Retirement Date;
- (c) in the case of Supervisors, who, immediately prior to the Commencing Date, were employees of John Cullum Construction Rand (Pty) Limited, the period from the 1st October 1967, or six months after his date of joining service, whichever was the later date to Normal Retirement Date.
- (d) in the case of all other Supervisors, the period from the Commencing Date, or six months after his date of joining Service, whichever was the later date to Normal Retirement Date.

Past Pensionable Service means

- (a) In the case of Members who, immediately prior to the commencing Date, were Members of the Previous Scheme, service with the Employer prior to 1st October 1967;
- (b) In the case of Supervisors who, immediately prior to the commencing Date, were employees of John Cullum Construction Rand (Pty) Limited, Service with the Employer prior to 1st October 1967;
- (c) In the case of all Members and Supervisors, Service with the Employer prior to the

Commencing Date, subject to a maximum of 5 (five) years.

8.2 Retirement at Normal Retirement Date

Subject to the provisions of Rule 8.4, a Member who is in service at his Normal Retirement Date shall retire on that date and shall become entitled to a Pension calculated in terms of Rule 8.1.

Rule 8.4 deals with early retirement due to ill-health which is not applicable here.

The respondent in a telefacsimile, dated 8 November 1996, addressed to the complainant, sets out the method of calculation for the complainant's benefit, as follows:

Monthly Pension=

$$[2\% \times (\text{Salary at 2}^{\text{nd}} \text{ February Prior to Retirement}) \times (\text{Fund Service})] \times 12 \\ + \{ \text{Additional Voluntary Contributions with interest} \} \times \{ (\text{Capitalisation Factor}) \times 12 \}$$

Full Capitalised value of Pension =

$$\text{Monthly Pension} \times 12 \times \{ \text{Capitalisation Factor} \}$$

The capitalisation factor is based on actuarial assumptions regarding the member and his spouse's life expectation together with the expected future investment return on the fund and future pension increases.

The respondent sets out the benefits due to the complainant, namely:

The period of service on which his pension has been based is 33 years and 6 months. His final salary, in terms of the Rules of the Sage Schachat pension fund is R124 044 per annum.

In addition to his normal pension, Mr Forman paid contributions to the supplementary fund to secure additional pension. The value of his supplementary fund, as at 31 July 1997, is R31 651, 74.

Mr Forman's pension amounts to R7 326,15 per month which includes R270,97 per month which arises from his contributions to the supplementary fund. His one-third cash option is R285 251,12 and, if he elects to receive that sum, then his monthly pension will be R4 884,10 per month.

The pensions quoted above are payable for the life of the member and guaranteed for a minimum period of 5 years. After the death of the member and the expiry of the 5 year guarantee period then, provided that the member leaves a spouse living, his spouse would receive 50% of the pension which was payable at the date of death or at the end of the 5 year guarantee period whichever was the later.

The late retirement factor is 1,17% and the commutation factor used is 9,734.

The complainant was dissatisfied with the calculation of his one third cash option amount of R274 700,54 (being R285 251.12 less supplementary fund moneys of R10 550,58), with a total capital value amounting to R824 101.62. He was dissatisfied with the application of the commutation factor of 9,734, which in his opinion was too low. The rules of the respondent contain no express provision as to what commutation factor should be used.

Hereafter, the complainant instructed his own actuary, Mr. M.J. Codron at Ginsburg, Malan & Carsons to investigate whether the commutation factor of 9,734 was too low.

Having investigated the matter, Mr M.J. Codron, an actuary of Ginsburg, Malan & Carsons, agreed with the complainant and on 19 August 1997 addressed a letter, to the respondent which read as follows:

I refer to your letter of 29 July 1997 and advise that the commutation factor would appear to be too low.

My understanding is that the benefits of the Fund are as follows:

5 year guarantee

50% spouse's pension

Pensioner increases have been approximately 100% of C.P.I.

A thirteenth cheque is payable annually although on a non contractual basis.

Allowing for the above using 9,734 as a factor i.e. 7,5% interest without allowance for a thirteenth cheque is clearly far too low. In fact it would appear that the factor should be closer to 13.

On behalf of Mr Forman please request the Trustees of the Fund to relook at the situation and advise me accordingly.

As a result the complainant elected not to take any payments from the respondent pending satisfactory resolution of the dispute.

On 15 October 1997 the respondent called a special meeting of the trustees to resolve this issue. The minutes of the meeting read as follows:

Present: Mr E.M. Langlands - Chairman
Mr D. Misselbrook
Mr P. MacIntosh
Mr M. Krain

By Invitation Mr G. Brown (representing consulting actuaries)
Mr W. Hamilton (Sage Life)
Mr L. Baasch (Sage Life)

1. Mr Misselbrook was nominated by Mr Krain as Principal Officer. Mr Misselbrook accepted the nomination.
2. The reason for calling the special meeting was to discuss the case of Mr S.J. Forman who was not satisfied with the factors used in calculating the portion of his retirement benefit that could be commuted. Mr C.R. Tomsett had received a letter from Mr M.J. Codron of Ginsburg, Malan and Carsons representing Mr Foreman, stating that in his opinion the commutation factor used was too low.
3. Mr Brown pointed out that the factor may, in fact, be lower than that used by some

other funds but that this basis had been applied in all previous cases of retirement from the Sage Schachat Pension Fund and was the same basis as that used by the Sage Group Pension Fund. He explained briefly the actuarial assumptions used. The implication of granting Mr Forman a different factor and the effect, if any, on existing and future pensioners would need to be considered.

2. Mr Brown advised that Mr Forman could elect not to commute and thereby take his full pension.
5. Mr Krain suggested that a list of employees who had retired during the past six years and the dates of retirement be drawn up by the administrators. The list should also indicate which pensioners had elected to commute a portion of their pension entitlement.
6. The pension fund rules were not specific with regard to how commutation factors should be calculated.
7. It was decided that the commutation factor would not be changed and that a letter be drafted in response to the letter for Mr M.J. Codron. The list of pensioners and dates would also be prepared for future reference.

Hence, the trustees decided not to change the commutation factor.

On 16 October 1997, the respondent addressed a letter to Ginsburg, Malan and Carsons and stated:

After careful consideration of your request the trustees resolved that the method of calculating the commutation of pension benefits would not be changed to favour one member. As a result the current established method, which has been in force for many years and subject to review during that period, will continue to be used.

In terms of the current rules the member may, of course, elect to not commute a portion of his pension, in which event his full pension will be subject to any ad hoc pension increases and any thirteenth cheque granted by the trustees.

With regard to the question of interest the respondent has referred me to the resolution of the board of trustees dated 27 October 1998 which read as follows:

The benefit will not be treated as a late retirement in terms of the Rules of the Fund, and any benefit due as at 31 July 1997 will, at the date of actual payment, be increased by a rate of interest equal to the rate of investment return achieved by the Fund, Provided that should the rate of return achieved be negative , then the original benefit will be paid and no reduction will be imposed.

The respondent in the letter dated 16 April 1999, addressed to the Pension Funds Adjudicator responds:

The fund has experienced a negative investment return for the period from Mr. Forman's retirement to the present date. In view of the dispute however the Trustees after again considering the expert evidence decided to retain Mr. Forman's benefit at the same level at it was on the date of retirement and not apply the negative return.

Hence, in the light of the negative interest earned by the fund no interest was due to the complainant.

Hereafter, there was an exchange of a series of correspondence between the respondent and complainant, which failed to resolve the deadlock in respect of the commutation factor. The trustees of the respondent in about March 1999 requested the funds actuary, Mr G.F. Brown of Alexander Forbes Consultants and Actuaries to conduct an investigation into the debate about the commutation factor used.

Mr Brown's opinion is set out in his letter of 14 April 1999 as follows:

The underlying basis used for the commutation factors, which incorporates an interest assumption of 7,5% p.a., has been in use for many years - at least since the 1980's. It has been consistent with the

funding basis, i.e. the basis for determining the ongoing contributions to the Fund and also the actuarial assessment of the accrued service liabilities. It effectively makes provision for increases in pensions of approximately 60% of the increases in the CPI. This basis is the same as that used for the Sage Group Fund, which is the Fund operated by the company which controls Sage Shachat.

Increases in pensions greater than 60% of the CPI could be granted if the actual investment yield on the fund's assets exceeded 7,5% p.a. by a sufficient margin. Until the time of Mr. Forman's retirement this was in fact the case, so that the Trustees could justifiably state that the long term policy was still to provide for increases equal to 60% of the CPI, while higher increases would be granted if this were justified by the Fund's investment performance and the Fund could afford it.

In line with the comments above we still consider that the continuing use of the current commutation basis could be justified. The statement by Mr. Codron that a factor of 13 would be more appropriate is really based on the view that the Trustees would wish to provide fully in the funding policy for increases in the CPI and would be aiming to pay full CPI increases irrespective of the Fund's current financial position or its investment performance (except that this would at least have to be in line with the assumed level). We therefore believe that both views have merit in the appropriate circumstances, but do not accept that the Sage Schachat Fund's approach is actuarially unsound. We also do not accept that members are prejudiced because they are not forced to commute, commutation is an option which is granted at the discretion of the Trustees and in terms of the Rules they have the authority to decide the basis on which this is done. There are many funds which do this on the basis of a fixed factor which has no claim to any particular actuarial equivalence.

In our view it would be in order to use the same factor to determine the value of the full pension if this were to be paid out to purchase a pension elsewhere for Mr. Forman. Certainly we can see no justification for using a higher factor. In this connection we feel it should always be borne in mind that the purpose of the Fund is to pay pensions to its members and not really to enable them to purchase pensions elsewhere. If members do not like the terms for outside purchase they can always continue to receive their pensions from the Fund.

The one area where some modification might be justified concerns the payment of the 13th cheque, which has now become established practice and which should therefore in our opinion be taken into account in the commutation calculations. It could be argued that it only became formally so after Mr. Forman retired and therefore that he need not be brought into the ambit of any change. However, it would not be unreasonable in our view to make such adjustment in his case. What is definite though is that if his commutation is changed accordingly, then the same change would have to be made for

all subsequent retirements.

It would seem reasonable to us for the Fund to grant the Fund's investment return on late payment of benefits, provided the delay period were in excess of the usual month or two, although potential prejudice to the Fund might be difficult to sustain when the surplus is so late. Certainly the fact that the Fund is prepared to ignore any negative returns has to be a point in the Fund's favour.

The complainant further argued that since he had not taken his pension benefit due at 31 July 1997, he is entitled to interest from 31 July 1997 to the eventual date of payment on the capital benefit amount found to be due to him.

The complainant seeks adjudication upon the following issues:

- (i) The full capital benefit due to him and in particular the commutation factor to be applied to him.
- (ii) Any interest on the capital amount due to him.

Analysis of evidence and argument

Any unreasonable decision by the trustees of the pension fund shall constitute an improper exercise of their powers or maladministration as contemplated in the definition of complaint in Section 1 of the Pensions Funds Act of 1956.

The trustee's decision must be shown to serve a legitimate object and should relate to concerns which are important in a democratic society. Secondly the means adopted should be proportional to the objective.

The decision of the respondent under scrutiny in this complaint, is a decision by the board of trustees on 15 October 1997 to refuse the complainant's request for the increase in the commutation factor of 9,734 to 13. The commutation factors used in the calculation of

pension benefits are usually calculated and provided by the fund actuaries. The factor is periodically reviewed and takes into account the long term interest rates, life expectancy of member and spouse, future investment performance of the fund and other relevant factors.

Mr Brown, of Alexander Forbes Consultants and Actuaries argues that the commutation factor of 9,734 was calculated using the tables of annuitant mortality and an interest rate of 7,5% per annum. Further, the factor takes into account guaranteed monthly payments for 5 years, and then a payment of a pension for life to the complainant and at half the amount to his spouse in the event of his death. It allows for 12 monthly payments per annum. The ages of the complainant and his spouse were taken into account when determining the factor.

From the minutes of the meeting quoted above and the letter dated 16 October 1997 addressed to the complainant's actuary by Mr E. Langlands, chairman of the board of Trustees, it is clear that the trustees were not prepared to change the commutation factor for one member, fearing the effect it would have on existing and future pensioners.

It is of concern to me that the trustees at this meeting did not ask the fund's actuary at Alexander Forbes Consultants and Actuaries to do a full report on the merits of an increase in the commutation factor. But rather, this report was only requested after the complainant lodged his complaint with my office, which was some sixteen months after the decision made by the board of trustees. Hence, when the board made its decision, it could not have taken into account factors raised in this report as the report was not in existence at that stage. The report essentially amounts to an *ex post facto* justification of an earlier decision of the board of trustees. Far better, would it have been had the board done a fuller investigation earlier.

From the minutes of the meeting and a subsequent letter dated 16 October 1997 (both quoted above), the board in making its decision took a series of factors into account,

emphasizing the following:

- (i) the commutation factor of 9,734 has been in force for many years and was subject to review during this period;
- (ii) concerns about incurring retrospective liability, as evident from its request for a list to be drawn up of all employees who retired during the preceding five years to whom the commutation factor was applicable - the list contained the names of 18 other employees to whom the above commutation was applied; and
- (iii) the complainant has the option in terms of the rules of the respondent not to commute a portion of his pension, and could receive his full monthly pension without commutation.

The report compiled by Mr G. F. Brown, the actuary of the respondent, raises several important issues, especially the following:

- (i) The statement by Mr. Codron, the complainants actuary that a factor of 13 would be more appropriate is really based on the view that the trustees would wish to provide fully in the funding policy for increases in the CPI and would be aiming to pay full CPI increases irrespective of the fund's current financial position or its investment performance (except that this would at least have to be in line with the assumed level). The fund accepts that both views have merit in the appropriate circumstances, but does not accept that the fund's approach is actuarially unsound.
- (ii) The one area where some modification might be justified concerns the payment of the 13th cheque, which has now become established practice and which could be taken into account in the commutation calculations. The fund argues that it would not be unreasonable to make such an adjustment in his case.

Mr Brown, has subsequently confirmed that if the 13th cheque is taken into account the commutation factor would have to be increased to 10,545.

The fact that two separate actuaries, on the same set of facts have come up with such wide ranging commutation factors that is, (9,714 versus 13) does show that actuarial science is not an exact science, and somewhat pliable in the determination of benefits. The size of the commutation factor will depend on the period for which the pension is payable and the real rate of return. The latter refers to the difference between the rate of investment return expected from the assets of the fund and the rate at which the pensions are expected to increase. Professor Asher, of the University of the Witwatersrand, believes that in normal circumstances, the real rate of return cannot exceed 5% without threatening the long term solvency of the fund as it is possible for normal interest rates to reduce to 5% or lower as is currently the case in certain countries where pension funds are making significant losses. On the facts of this matter the respondent has adopted an interest rate which is in line with rate used by the Sage Group Fund, which is the fund operated by the company which controls Sage Schahat. Mr Brown, the respondent's actuary, has verbally confirmed that whilst the real rate of return component in the commutation factor 9,714 varies, there were times where it exceeded 5%. Thus, the interest component and the real rate of return of the commutation factor is in line with other funds in the group of other funds in general.

The board of trustees, took a series of factors into account. From the minutes it is not clear what weight was given to actuarial assumptions made by the actuary present at the meeting. The trustee's fear of retrospective liability is not in itself of sufficient weight to deny an application for an increase in the commutation factor. It is nevertheless a highly relevant consideration. Similarly, the mere fact that the commutation factor has been in use for several years subject to review, while it does not *ipso facto* make the commutation factor correct and reasonable it is important, especially on application to the facts relating to the complainant.

One naturally hesitates to interfere with a decision of trustees on the grounds of the weight attached to any relevant factor. According to Baxter, *Administrative Law* at 505 (1984), the decision-maker has to show that he has considered relevant factors and does not have to show the weight attached to each consideration.

Further were I to adjust the commutation factor to take into account the thirteenth cheque I would in effect be setting wages, which is clearly not the role of the Pension Funds Adjudicator. Undeniably, the trustees might have been more generous in their choice of a commutation factor. However, the one chosen falls within the range of reasonable actuarial practice, and there is no manifest injustice or unfairness in its application in this instance.

Thus, the trustees properly considered several relevant factors, and consequently their decision based upon these factors was reasonable and a proper exercise of their powers.

With regard to the question of interest, the complainant argues that he is entitled to interest on the capital amount due to him from the first of July 1997 to the date of payment.

The rules of the fund make no provision for pension benefits kept by the respondent on behalf of the complainant whilst a dispute regarding the calculation of the benefit is resolved. The rules are silent in this regard. Consequently, there is no basis in the rules of the respondent allowing any claim for interest.

The leading case in South African law in respect of enrichment liability for interest is *Commissioner for Inland Revenue v First National Industrial Bank Limited* 1990 3 SA 641 (A). In this matter Nienaber AJA handing down the majority judgement held (654):

....I am not aware of any principle of law which entitles one party to demand interest at the legal rate from another simply because the former has been deprived of the benefits and fruits of the money which he had paid to the latter. *Baliol Investment Company (Pty) Limited v Jacobs* (1946) TPD 269 suggests the opposite: that interest is not ipso facto recoverable; it would be payable only if the parties had so agreed or if the payee was in mora.

Hence the only basis on which the respondent could held liable is if the requirements of *mora debitoris* are met. The requirements of *mora debitoris* are as follows:

- (i) Performance must be possible not withstanding delay;
- (ii) Debt must be due and enforceable;
- (iii) The delay must be wrongful; and
- (iv) Delay must be due to the fault of the debtor

In terms of the rules of the fund, the debt was due and enforcable on 31 July 1997 and enforceable within a reasonable time thereafter. The key requirement which needs to be analysed is whether the delay for paying the benefit by the respondent is due to the fault of the respondent. On the facts of this matter no such fault can be ascribed to the respondent. The respondent in a series of letters addressed to the complainant had requested further instructions from the complainant in respect of payment of his pension benefit. The complainant has elected , not to take his capital pension benefit, pending the resolution of the dispute in respect of the commutation factor.

Moreover, on 27 October 1998 the board of trustees of the respondent passed a resolution, in terms of which, the complainant would be entitled to interest on his capital benefit due at 31 July 1997 at the rate of investment return achieved by the fund and in the event of the fund achieving a negative interest then no reduction will be applied to capital benefit. The performance of the fund in the aforesaid relevant period was as follows:

This pension fund is invested in a market value portfolio, which is unitised like a unit trust. The unit prices as at date of retirement and 30/09/98 are as follows:

Investment	Unit price 31/07/97	Unit price 30/09/98	Return
Managed Fund	936,25	788,01	-15,83%
Special Fund	1121,38	825,40	-26.39

The unit prices reflect the market values of the underlying assets and fluctuate monthly depending upon the investment performance of a spread of investments such as equities, property, gilts and cash in the portfolio. It is commonly known that the world economic markets are in turmoil and South Africa is no exception. The performance of the main markets in South Africa up to 30 September 1998 will illustrate this point:

	Year to date	1 Year
JSE All Share	-16,3%	-26,6%
All Bond	- 5.5%	- 1,0%
Property Trust Index	-17,3%	-14,1%
JSE Financial and Industrial	-22,3%	-28,9%

Nearly all Retirement Fund Portfolios of the Investment Houses in South Africa experienced negative returns for the one-year up until 30 September 1998.

Hence, the respondent argues that as a result of the negative return performance of the fund for the period 31 July 1997 to 30 September 1998 the complainant is not entitled to any interest on the capital benefit. However, no information has been provided about the fund's performance after that date, accordingly the complainant may as yet be entitled to payment of some growth.

Moreover, in such circumstances, interest based on the "fate of the fund" is a fair and reasonable practice and in accordance with Pension Fund Circular 97, issued by the Registrar of Pension Funds, which provides:

Normally, this investment return is the investment return earned on the assets of the transferor fund, positive or negative (defined as the 'fund rate of return' for the purposes of this Circular). In this case, the financial situation of the transferor fund will not be adversely impacted by the terms of the transfer, if the market falls between the effective date of the transfer and the date of payment.

When a fixed rate of interest is agreed, or 'call interest' is specified, the transferor fund is exposed to the risk that the investment return earned may be less than such agreed rate of interest. In order to protect against this risk (unless it is trivial because of the size of the transfer relative to the remaining

fund), the trustees should either disinvest the assets to be transferred and invest in an instrument that will earn the agreed rate of interest, or the trustees must hedge the investment performance of the assets to be transferred in such a way that the required rate is earned.

If the transferor fund is exposed to a significant risk and has not protected itself in this way, the valuator to the transferor fund should qualify his statement that 'the reasonable benefit expectations of the remaining members, pensioners and deferred pensioners have not been detrimentally affected' in the Special Report of the Transferor Fund as set out in Circular PF 78.

Although the circular deals with section 14 transfers the principle enshrined is relevant and applicable to this matter, that is, when trustees make a decision about the investment return they can either adopt the investment return of the fund itself or an agreed rate of return. Where there is an agreed rate of return then trustees need to either disinvest the asset and invest it with their investment vehicle or hedge the asset so that the agreed rate of return may be achieved. The spirit of Pension Fund Circular 97 seems to suggest that in the absence of an agreement between the parties the investment return of the fund applies.

On the facts of this matter the complainant elected to leave his benefit with the respondent whilst his dispute over the commutation factor was resolved. On 27 October 1998 the board of trustees decided that the rate of interest will be the rate of interest achieved by the fund itself. The respondent can be criticised for waiting till the 27 October 1998 to make this decision. However, once the respondent made this decision and informed the complainant thereof, the complainant's failure to challenge this particular resolution or to suggest an alternative investment vehicle justifies the respondent's decision to adopt the rate of return of the fund itself. Further, in the absence of an express agreement between the parties I am inclined to follow the spirit of PF Circular 97 and deem that the trustees were justified in adopting the rate of return of the fund itself.

Accordingly, I make the following order:

- (i) The complaint in respect of the increase in the commutation factor is dismissed.
- (ii) The complainant shall within 6 weeks of the date of this determination inform the respondent whether he intends to commute one third of his pension benefit.
- (iii) In the event of the complainant electing to commute one third of his pension, the respondent is directed to pay the amount to the complainant within 14 days of his election together with the capital amount of his monthly pension for the period of 1 August 1997 to date of payment.
- (iv) The respondent is further directed to pay interest to the complainant on his benefit payable from 1 August 1997 to date of payment at the rate of investment return achieved by the fund, provided that should the rate of return be negative, no reduction will be imposed.
- (v) No order as to costs is made.

DATED at CAPE TOWN this 9th DAY of JULY 1999.

.....

JOHN MURPHY
PENSION FUNDS ADJUDICATOR