

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/KZN/476/99/KM

In the complaint between:

G. P. NAIDOO

Complainant

and

PRINTFLEX PENSION FUND

Respondent

**DETERMINATION IN TERMS OF SECTION 30M 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") relating to the computation of the complainant's pension benefit on leaving the fund pursuant to termination of his employment.
2. The complainant is Mr G.P. Naidoo, a former member of the respondent..
3. The respondent is the Printflex Pension Fund, a defined contribution pension fund duly registered under the Act.
4. No hearing has been held in this matter, but an investigation under my supervision has been conducted by my assistant adjudicator, Karin MacKenzie. I have accordingly relied exclusively on the documentary evidence and written submissions gathered during the course of our investigations in the determination of this matter.

5. As stated, the complaint relates to the computation of the complainant's withdrawal benefit. However, it is not necessary to deal with the merits of the complaint as will become evident from my comments below on the question of jurisdiction. In order to place the jurisdictional issue against the appropriate background, I set out a brief history of the matter.
6. On 1 April 1999 a complaint from Mr Naidoo was received at our offices. It was spartan in the extreme, and short enough to be reproduced in full. He states as follows:

I would like to have you investigate the withdrawal of my Printflex Pension Fund known as "Company Pension Fund".

At work I had the chapel to query about this fund: my boss at Flexoprint Mr Baxter Bruce replied that his half would not be given to staff that resign. I have served for 18 years.

7. After due investigation it was established that the complainant had never lodged a written complaint with either the fund or the employer prior to submitting his complaint to these offices. In this regard section 30 A of the Act provides as follows:

30A Submission and consideration of complaints

- (1) Notwithstanding the provisions of the rules of any fund, a complainant shall have the right to lodge a written complaint with a fund or an employer who participates in a fund.
- (2) A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof.
- (3) If the complainant is not satisfied with the reply contemplated in subsection (2), or if the fund or the employer who participates in a fund fails to reply within 30 days after the receipt of the complaint the complainant may lodge the complaint with the

Adjudicator.

8. It is clear from the provisions of the statute that the lodging of a written claim with either the fund or the participating employer (in conjunction with a response or a lapse of thirty days) is a condition precedent for the establishment of jurisdiction of this tribunal. Until such time as the requirements set out in the section are complied with this tribunal is not competent to preside over the dispute.
9. For this reason a letter was sent to the complainant by my office on 25 May 2001 explaining the necessary steps that needed to be observed and asking the complainant to contact this office. The letter read as follows:

We refer to your complaint in the above matter and more specifically our letter to you of 7 May 2001 to which you have not yet replied.

A point has been brought to our attention by the administrators of the fund, which has an important impact on your claim as presently formulated. According to their records it appears that you never lodged a complaint with either the fund or your employer prior to lodging your complaint with our office. If this is indeed the case, then your lodging of the matter at our office was premature, and we are unable to process your case until such time as you have lodged your complaint with both the fund and the employer and allowed them 30 days to respond to your complaint.

Under the circumstances, we suggest that you do this and if you receive no response, or a response with which you are dissatisfied, then you may re-lodge your complaint with us after the 30 day period has expired.

In this regard, we take the opportunity of sending you some guidelines as to the details that we require from you when you lodge your complaint, many of which were missing in your first set of papers.

We have also been unable to contact you telephonically on the numbers originally submitted to this office, and directory enquiries apparently have no current phone listing for you. Kindly supply us with your new details. If we do not hear from you by close of business on Monday, 18 June 2001, confirming that you have received our letters and advising us as to your further

actions in this matter, we will assume that you no longer wish to pursue this complaint and we will accordingly close your file.

We await your further advices.

10. The letter was accompanied by an explanatory set of guidelines aimed at assisting complainants to include the necessary facts and allegations in the formulation of their complaints.
11. In response to this the following communication was received from the complainant on 1 June 2001 by telefax:

To Printflex Pension Fund

I Mr G P Naidoo ID No 5806195111088 known as Roy Naidoo clock card nos 54 worked at Flex O Print from 13-7-81 to 1999. Please may I have these questions answered.

- 1) Why I did not receive my full Benefit?
- 2) Is Mr Baxter Bruce part of your company
- 3) Was there 1 or 2 cheques made towards my fund?
- 4) Can I please have the Momentum for this P.P.F

Thanks

U

Mr G P Naidoo

Please reply A.S.A.P.

27 HIGHSTONE
WHETSTONWE
PHOENIX
4068

Not only has the complainant completely disregarded the guidelines sent to him, but he has in addition omitted to provide any contact details as specifically requested in our letter.

12. It is not clear from the fax set out above that the complaint has been lodged with the employer or the fund. In any event it is so vaguely formulated that it arguably does not constitute a complaint for the purposes of section 30A. I am therefore not persuaded that there is even a *prima facie* case that this tribunal has jurisdiction in the matter. It might well be that if the complainant resubmitted this complaint in an appropriately formulated manner with due regard to the provisions of section 30A there may be some merit in his complaint, but that is an issue which I refrain from expressing an opinion on at this time, given that the complaint fails on a technical point.
13. The complaint is accordingly dismissed.

DATED at Cape Town this 28th day of August 2001.

John Murphy
Pension Funds Adjudicator