

# IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/FS/58/98/NJ

In the complaint between:

**Johannes Modupe**

**Complainant**

and

**Welkom Stationers and Printers Midas Pension Plan**

**First Respondent**

**Welkom Stationers and Printers (Pty) Ltd**

**Second Respondent**

---

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

---

1. On 17 April 2001 I handed down an interim ruling and issued a rule *nisi* calling upon the parties to show cause why the following order should not be granted:
  1. The deduction of R4 216, 20 from the complainant's benefit is contrary to section 37A read together with section 37D of the Pension Funds Act of 1956, and is therefore unlawful and hereby set aside.
  2. The second respondent is directed to pay the complainant, within six weeks of this determination, R4 216, 20 plus interest thereon at the rate prescribed by the Prescribed Rate of Interest Act, from 31 July 1995 till the date of payment.
2. The factual background of this matter has been fully canvassed in the interim ruling and it is unnecessary to again repeat them in any detail. Suffice it to say that the complainant was dismissed from service on 31 July 1995 and was entitled to an early withdrawal benefit of R11,702.45. In the interim ruling, I held that the fund issued a cheque of R11,702.45 payable to the second respondent ("**the employer**").

Thereafter, the employer banked the cheque and issued a new cheque to the complainant in the amount of R7,486.25. I held that the employer effectively had deducted R4,216.20 from the benefits in respect of amounts owing to itself by the complainant. I also concluded that in terms of the rules of the fund, the benefit was correctly determined. However, an interim ruling was issued calling upon the parties to show cause whether the fund was entitled to deduct the aforesaid amount from the complainant's benefit.

3. Ms L Brabrook-Norman acting on behalf of the respondents, contended that I incorrectly recorded the factual background to this matter, which had a material impact on the legal conclusions drawn thereafter. That is, she stated that the fund drew a cheque in favour of the complainant in the amount of R11,702.45. This cheque was handed to the employer to ensure payment of the benefit to the complainant. Therefore, she concluded that the fund did not make a deduction from the withdrawal benefit and requested that the complaint be dismissed.
4. Upon a re-examination of the file and further investigation, it is evident that Ms Brabrook-Norman is correct in her contention, in that, a cheque in the amount of R11,702.45 payable to the complainant (the payee) was sent to the employer. The complainant on his own version admitted that he received the cheque. Thereafter, the complainant and officials of the employer entered into negotiations, from which it appears that the complainant handed over the cheque to the employer, who issued a new cheque to him in the amount of R7,486.25.
5. As stated in the preliminary ruling (see paragraphs 15 and 16), the right to a pension benefit may not be reduced in respect of a debt, except in the specified instances set out in the Pension Funds Act, the Income Tax Act and the Maintenance Act. Section 37D of the Pension Funds Act, in turn permits eight kinds of deductions. However, it is unnecessary to examine the provisions of section 37D, as no unlawful deduction was made by the fund. That is, the complainant's withdrawal benefit amounted to

R14,025.25. The fund deducted R2,322.80 for income tax in terms of the Income Tax Act (see the fourth schedule). Hereafter, the withdrawal benefit of R11,702.45 was paid to the complainant by means of a cheque. This cheque was handed to the employer (who merely acted as an agent of the fund) to hand over to the complainant. The employer, acting as an agent of the fund duly complied with its duties by handing the cheque over to the complainant. Hence, it is clear that no unlawful deductions were made from the complainant's early withdrawal benefit. Accordingly, the rule *nisi* issued on 17 April 2001 is hereby discharged.

DATED at Cape Town this 11<sup>th</sup> day of May 2001.

---

**John Murphy**

Pension Funds Adjudicator