IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/1457/00/NJ

In the complaint between:

L A Cilliers **Complainant**

and

Kagiso Khulani Supervision Food Services Pension Fund **Respondent**

INTERIM RULING IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF 1956

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1. This is a complaint lodged with the Office of the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act, 24 of 1956 (**"the Act"**). The complaint relates to the payment of an early withdrawal benefit and whether the benefit was correctly computed in terms of the rules of the respondent fund.

2. No hearing was held. An investigation under my supervision was conducted by my assistant, Mr Naleen Jeram. For reasons, which appear below, I have chosen to hand down an interim ruling.

3. The complainant is Ms Louise Andrea Cilliers, an adult female, currently residing in Sandton, Gauteng. The complainant is represented by Dr Peter Fox.

4. The first respondent is Kagiso Khulani Supervision Food Services Pension Fund, a pension fund falling within the definition of a pension fund

organisation contained in section 1 of the Act (**"the fund"**). The fund is represented by Ms Jill Wright, the chairperson of its board of management. The rules of the fund are divided into three sections, namely, the definitions, the general rules and the special rules. These three components jointly form the rules governing the operation of the fund.

5. The complainant commenced employment with a participating employer of the fund on 1 February 1998 and simultaneously became a member of the fund. On 26 June 2000 she was retrenched from service. Her withdrawal benefit was regulated by general rule 7.1, which reads:

> Cash Sum Benefit
>
> If a MEMBER terminates SERVICE before his NORMAL RETIREMENT DATE (other than on retirement under General Rule 5) he shall become entitled to a cash sum benefit of the amount specified in the Special Rules.
>
> Payment of such benefit may at the discretion of the TRUSTEES be withheld for a period not exceeding 6 months.

Since the complainant was only 23 years of age and had not completed 10 years of membership, she was not entitled to a benefit under the retirement rule regulated by general rule 5. Special rule 5.2 regulated the value of the withdrawal benefit and reads:

> Retrenchment
>
> If a MEMBER withdraws as a result of becoming redundant either as a result of any merger or proposed merger between the EMPLOYER and any third party, or for any non-voluntary reason not reflecting on his conduct or efficiency, he shall become entitled to his RESERVE VALUE.

Reserve value is defined in the definitions section as follows:

> In relation to a MEMBER, means the value as determined by the ACTUARY of the benefits which have accrued to the MEMBER in terms of the RULES as at the date of calculation.
>
> In relation to a PENSIONER,…

The fund computed the benefit as follows:

Date of birth:	12/9/1997
Age at date of calculation:	23
Pensionable service date:	01/02/1998
Accrued Service at date of calculation:	2 year 5 months
Normal Retirement Date:	01/07/2042
Pensionable Salary at date of calculation:	R80,640.00
Accumulated Contributions without interest:	R13,182.00
Withdrawal Benefit:	R14,137.70
Actuarial Reserve as at date of Calculation:	R14,237.18

Despite several requests by my assistant (both telephonically and in writing), the fund has not provided this tribunal with a full computation of the actuarial reserve value. Instead, Ms Wright provided us with an explanation from Mr Ray Welham (the fund's actuary), in respect of the definition of actuarial reserve. The explanation reads:

> The actuarial reserve of a member of a defined benefit fund is the present value of the benefits that have accrued to that member in respect of service prior to the effective date of calculation. Its determined as follows:
>
> (1) Calculate the retirement, withdrawal and death benefits payable by the fund to the member that have accrued as a result of service and contributions to the date of calculation.

(2) During each year between the date of calculation and normal retirement, project each of the accrued benefits in (1) above, taking into account:

(a) Expected future salary increases if, in terms of the rules, the accrued benefit in (1) is based on salary; and

(b) The relevant interest and vesting factors if, in terms of the rules, the accrued benefit in (1) is based on such factors.

(3) Determine for each benefit the probability each year that the benefit will be paid. The probabilities of withdrawing from service, of dying before retirement, and of surviving to retirement are taken into account.

(4) Multiply each benefit during each year by the probability that it will be paid, and then discount this value at the valuation rate of interest to the date of calculation.

(5) The sum of the discounted values in (4) above is the actuarial reserve for the member in question.

It is noted that actuarial reserves are designed to be used to assess the solvency of a defined benefit pension fund at a particular valuation date. The fund is said to be solvent if the total of the actuarial reserves of all members of the fund is equal to or less than the value of the assets of the fund.

8. The complainant was dissatisfied with the value of her withdrawal benefit. Dr Fox on her behalf submitted that she effectively only received her own contributions and claimed that his client was entitled to the employer contributions made on her behalf. He argued that the early withdrawal benefit rule discriminated against those with limited membership and members whose services were terminated by retrenchment/redundancy. He requested an order directing the fund to pay all the employer contributions made on behalf of his client to the complainant.

9. Ms Wright on behalf of the fund submitted that the complainant's actuarial reserve value of R14,237.18 (before tax) was calculated with reference to her pensionable service, which only amounted to two years and five months. According to her, the reserve value for a young member with a short period of service (as in the case of the complainant) is fairly low (especially in comparison to her contributions). However, be that as it may, Ms Wright's contended that the benefit was correctly determined in terms of the rules of the fund and therefore requested that the complaint be dismissed.

10. The payment of any withdrawal benefit arising out of a pension fund organisation is regulated by the rules of that particular fund. *In casu*, in terms of general rule 7.1 read together with special rule 5.2 and the definition of reserve value, the complainant was entitled to her reserve value, which in turn is defined as the value determined by the actuary of the fund with reference to the benefits that have accrued to the member at the date of the calculation in terms of the rules of the fund. Thus, the actuary of the fund is required to make a calculation in respect of the withdrawal benefit. Therefore, the complainant is not per se entitled to the employer contributions made on her behalf (as suggested by Dr Fox), but rather she is entitled to her reserve value.

11. As stated, the fund has not provided this tribunal with a full computation of the actuarial reserve value and thus I am unable to determine whether the benefit was correctly computed/calculated in terms of the rules of the fund. Accordingly, in the interests of justice, it is prudent to postpone this matter pending receipt of a full calculation of the benefit. The parties may submit further submissions upon receipt of a full calculation.

12. Thus, the interim order of this tribunal is as follows:

12.1 The respondent fund is directed to provide this tribunal and the complainant with a full computation of her reserve value (including all assumptions made by the actuary) as determined by the fund's actuary, within 7 days of the date of this ruling.

12.2 The fund is directed to show cause why a costs or inconvenience award should not be made against it.

DATED at Cape Town this 5th day of December 2001.

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John Murphy

Pension Funds Adjudicator