

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/KZN/489/00/NJ

In the complaint between:

L Robinson

Complainant

and

Central Retirement Annuity Fund

Respondent

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

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 a payment of a death benefit in terms of section 37C(1)(a) of the Act, in particular, whether the respondent effected an equitable distribution as required by the said section.
2. No hearing was held in this matter. An investigation under my supervision was conducted by my investigator, Naleen Jeram. In handing down this interim ruling, I have relied exclusively on the documentary evidence and written submissions gathered during the course of our investigation.
3. The complainant is Lesley Robinson, in her capacity as guardian and mother of Lauren Anne Greeff, both of whom are currently residing at Pietermaritzburg, Kwa-Zulu Natal.
4. The respondent is the Central Retirement Annuity Fund, a pension fund duly

registered under the Act and falling within paragraph (a) of the definition of a pension fund organization contained in section 1 of the Act (“**the fund**”). The fund is represented by Adv Frik Pretorius of Sanlam Legal Services.

5. On 24 June 1978 the complainant and Mr Greeff were married. Subsequently, Mr Greeff became member of the fund and two life policies were issued to the fund for the benefit of Mr Greeff’s dependants. On 12 July 1983, Lauren Anne Greeff was born from this union. On 25 July 1991 the marriage was dissolved by a divorce order. In terms of the order, Mr Greeff was required to pay maintenance to the complainant in respect of Lauren Anne in the sum of R250.00 per month together with all school fees, cost of school uniforms, after school care and medical expenses. Hereafter, Mr Greeff married Ms Orna Greeff and two minor children were born from this union, namely, Emma Greeff (born on 13 May 1994) and Heidi Greeff (born on 4 November 1996). On 3 September 1999 Mr Greeff passed away.
6. The gross death benefits in respect of the two policies payable by the fund amounted to R83,417.21. It was common cause that the deceased was survived by four dependants, namely Orna Greeff (spouse); Emma Greeff; Heidi Greeff; and Lauren Anne Greeff. The fund in making an equitable distribution amongst the dependants considered the following information:
 - 6.1 Orna Greeff received R769,637.45 from several life insurance policies taken out by the deceased.
 - 6.2 The deceased and Orna Greeff declared in a joint will that the survivor of them was to be the sole heir or heiress of the estate of the first dying of them. However, the deceased’s estate was insolvent and therefore no benefits were distributed to the heirs.
 - 6.3 Lauren Anne received R109,582.10 from an endowment policy taken out by the

deceased. She was staying with her mother, who was employed by a firm of attorneys on a full time basis.

6.4A detailed maintenance claim submitted by Lauren Anne (reflecting her monthly expenses as well as future expenses relating to tertiary education). The total claim in respect of her maintenance and education amounted to R165,977.51. This claim was also lodged against the deceased's estate, however due to the estate being insolvent, the claim was unsuccessful.

6.5 The minors Emma and Heidi were living with their mother Orna Greeff, who was responsible for their maintenance and upkeep.

7. Based on the above considerations, the trustees of the fund decided to award Lauren Anne Greeff 40% (R33,366.89) of the benefit and 60% (R50,050.33) to Ms Orna Greeff and her two minor children. In summary, the various benefits received by the dependants were as follows:

Lauren Anne Greeff	
1. CRAF (respondent)	R33,521.58 (Incl. R154.69 for late payment interest)
2. Sanlam (Endowment)	R109,582.10 (Incl. R1,762.36 for late payment interest)
Total	R143,103.68

Orna Greeff (In her personal capacity as well as in her capacity as guardian of the minor children)	
1. CRAF (respondent)	R50,050.32
2. Life Policies	R769,637.45
Total	R819,687.77

8. The complainant was dissatisfied with the distribution effected by the fund. She contended that her minor child's reasonable maintenance needs amounted to R165,977.51. She submitted that Orna Greeff and her two minor children have

benefited substantially from various life insurance policies taken out by the deceased. Therefore, she seeks an order directing the fund to award her a greater portion of the death benefit.

9. Adv Frik Pretorius acting on behalf of the fund submitted that Orna Greeff benefited from several other insurance policies and the fund felt that she would be in a position to utilize this money to maintain a household including the two minor children in her custody. Laura Anne was also a beneficiary of an endowment policy and this together with the death benefit awarded by the fund would by and large meet her reasonable maintenance needs. Furthermore, her mother and custodian was presently employed and in a position to maintain her. Therefore, he concluded that the distribution of 60% to Orna Greeff and 40% to Lauren Anne was an equitable one as required by the section and he therefore requested that the complaint be dismissed.

10. As stated, the payment of the benefit is regulated by section 37C(1)(a) of the Act, in terms of which the fund was required to make an equitable distribution amongst the beneficiaries. In making the equitable distribution, the fund needs to consider the following factors:
 - the amount available for distribution;
 - the ages of the beneficiaries;
 - the beneficiaries relationship with the deceased;
 - the wishes of the deceased;
 - the financial status of the beneficiaries; and
 - the future earning capacity/potential of the beneficiaries.

Furthermore, the trustees must consider relevant factors and ignore irrelevant considerations. They should not fetter their discretion nor should its decision reveal an improper purpose.

11. *In casu*, a highly relevant consideration is the reasonable maintenance needs of Lauren Anne. In terms of a claim submitted by her guardian to the fund and the executor of the estate, she claimed that her reasonable maintenance needs amounted to R165,977.51. This claim was accepted by the trustees of the fund. It was not challenged by either the executor of the deceased's estate nor the trustees of the fund nor Ms Orna Greeff. Having established that Orna Greeff and her minor children's needs were well catered for in light of her receiving substantial sums from various life insurance policies taken out by the deceased, the question then turned to the maintenance needs of Lauren Anne. Bearing in mind that she received R109,582.10 from an endowment policy taken out by the deceased (a relevant factor taken into account by the trustees), it seems strange that the trustees then elected to pay her an amount less than her reasonable maintenance needs. One can safely draw the conclusion that the trustees did not properly consider the reasonable maintenance needs of Lauren Anne.
12. Where a discretion has been improperly exercised, our courts are reluctant to substitute their decision for that of another functionary, unless there are exceptional circumstances. In view of the considerable lapsing of time from the date of the death of the deceased, the lengthy ongoing correspondence between the fund and the various beneficiaries and the purpose of section 30D of the Act (which requires me to dispose of complaints in a procedurally fair, economical and expeditious manner), I believe it would not be inappropriate for me to substitute my decision for that of the fund.
13. As stated, by virtue of the Orna Greeff receiving R769,637.45 from various life policies, the needs of herself and the minor children are adequately provided for. On the other hand, Lauren Anne has received R109,582.10 from the endowment policy, R56,395.41 short of her reasonable maintenance needs. I believe the interests of justice would be served by awarding her this amount and the balance

may be awarded to the remaining dependants. Accordingly, Lauren Anne is entitled to 67.6% (R56,395.41) of the benefit (R165,977.51 – R109,582.10), less amounts already received (R33, 521.58), plus interest thereon. Orna Greeff and her minor children are entitled to the remainder (32.4%) of the death benefit. The fund is entitled to recover the over paid amounts distributed to Ms Greeff.

14. However, it would be prudent not to make a final order in this matter for the following reasons. No hearing has been held and Ms Orna Greeff, who has a substantial interest in this matter has not been joined as a party to these proceedings. In the interests of procedural fairness, it would be prudent to join Ms Greeff, both in her personal capacity as well as in her capacity as guardian of Emma Greeff and Heidi Greeff, as the second respondent to the complaint, in terms of section 30G(d) of the Act and issue an interim ruling.

15.1 Accordingly, the preliminary order of this tribunal is as follows:

15.1 Ms Orna Greeff is joined as a second respondent to the complaint in terms of section 30G(d) of the Act.

15.2 The respondent is directed to serve a copy of the complaint, its response, this interim order and subsequent submissions on Ms Greeff, within 7 days of the date of this ruling.

15.3 A rule *nisi* is hereby issued in terms of which the parties are called upon to show cause, if any, on or before 21 May 2001, why the following order should not be granted:

15.3.1 The decision of the respondent to award the complainant 40% and Ms Greeff 60% of the benefit is contrary to section 37C of the Act and is therefore unlawful and hereby set aside.

15.3.2 The respondent is directed to pay the complainant R22,873.83, together with interest thereon at the rate prescribed in the Prescribed Rate of Interest Act for a judgement debt from 11 January 2000 to the date of payment, within 6 weeks of the date of this ruling.

DATED at Cape Town this 3rd day of May 2001.

John Murphy

Pension Funds Adjudicator