

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.: PFA/ KZN/471/2000/CN

In the complaint between:

George A. Alder

Complainant

and

Anglo American Group Pension Fund

First Respondent

Mondi Forests Group Limited

Second Respondent

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

1. This is a complaint in terms of Section 30A (3) of the Pension Funds Act of 1956, which concerns three issues, namely the maladministration of the fund by the employer, through its delay in resolving an issue involving the transfer value of the complainant from a previous fund; a dispute of fact in relation to the fund, between the complainant and the employer regarding deductions made from a monthly pension in respect of medical aid contributions; and maladministration of the fund by the fund through its issuing of different retirement benefit quotes.
2. No hearing has been held. In coming to a decision, I have had regard to the documentary evidence compiled in the course of this investigation by my Assistant Adjudicator, Cikizwa Nkuhlu and the submissions made by the parties.
3. The complainant is George Alfred Alder, an adult male residing at Ballito, in the

KwaZulu-Natal province.

4. The first respondent is the Anglo American Group Pension Fund, a pension fund duly registered in terms of the Pension Funds Act (“the fund”).
5. The second respondent is Mondi Forests Group Limited (“the employer”), a company duly registered in terms of the Company laws of the Republic of South Africa.
6. The complainant became a member of the first respondent after the merger, during October 1989, of the St Lucia Sugar Farms (Pty) Limited Part of the Anglo American Group Pension Fund with the Mondi Part of the Anglo American Group Pension Fund. On 30 April 1999, the complainant elected to go on early retirement, rather than on ill-health retirement, so that he could remain a member of the employer’s medical aid fund.
7. Prior to submitting the termination forms, the complainant had received three different quotes from the fund, dated 18 December 1998, 22 October 1999, and 5 November 1999, respectively.
8. As he was still involved in negotiations with the employer over his contributions to the St Lucia Sugar Farms (Pty) Ltd Pension Fund, he could not at that stage accept the quote dated 18 December 1998.
9. He subsequently accepted the quote dated 22 October 1999, which provided *inter alia* that should he go on early retirement, he would receive a tax-free lump sum of R84 000-00, and a monthly pension of R2 617-57. Unfortunately, his acceptance did not reach the fund, as his letter of acceptance was mislaid at his employer’s Human Resources Section.
10. In his acceptance letter, he included a clause reserving his right to continue

discussions and negotiations on the St Lucia pension issue. The outstanding issues relating to the St Lucia Pension Fund seem to have been finally resolved after the complainant had posted his letter of acceptance of the 22 October 1999 quote. Together with the letter of acceptance, the complainant included a "sworn statement" wherein he stated that he "recognised that the pension fund rules state that signature of the pension fund documents is irrevocable and no further discussion is allowed".

11. In the meantime, the employer sent him a letter enclosing the quote dated 5 November 1999. The letter reads as follows:

PENSION FUND QUOTE

Herewith please find the authorized quote received on 5 November 1999 for your attention. Note that this quote replaces the previous one which was attached to our letter to Yvonne dated 22 October 1999.

12. The attached quote contained three options that were available to the complainant, one of which was to accept a tax-free lump sum of R108 000-00, plus a monthly pension of R1 683-52. The complainant accepted this option by sending a fax to Ms Martyn, in which he instructed her to activate his pension as urgently as possible. It is on the strength of that acceptance that the employer submitted the termination forms to the fund.
13. The fund only received the notification of retirement on 19 January 2000, and it deposited an amount of R13 151-80, in respect of arrear pensions for the period 1 May 1999 to February 2000, into the complainant's account on 2 February 2000. The lump sum payment of R108 000-00 was deposited into his account on 5 May 2000.
14. The issues raised by the complainant are, firstly that he never intended to

accept the smaller monthly pension provided by the option contained in the quote dated 5 November 1999, but would have preferred to receive the higher monthly pension set out in the 22 October quote. Secondly, he contends that the fund should pay interest on the late payment of his pension and lump sum; and thirdly, that the deductions made from his monthly pension in respect of medical aid contributions should be a smaller amount than is being deducted.

15. The issue relating to medical aid deductions falls outside the jurisdiction of this tribunal, and will thus not be addressed at all.
16. The situation pertaining to the acceptance of the quotes in this matter is analogous to the principles of the law of contract relating to offer and acceptance. An offer remains open for acceptance until it had been revoked, if no deadline for acceptance has been placed. Just like an offer, the fund's quote, dated 22 October 1999 remained open for acceptance until it had been revoked.
17. When an offeree accepts an offer, he must communicate his acceptance thereof to the offeror. Until the acceptance has reached the mind of the offeror, no obligation can arise, and until that happens, the offeror is entitled to withdraw his offer:

Fern Gold Mining Company v Tobias (1890) 3 SAR 134

18. The complainant purported to accept the offer, which had been faxed to him, by posting his acceptance thereof on the same day, by registered mail. Unfortunately for him, his acceptance did not reach the fund at all, and in the meantime, the fund sent another quote dated 4 November 1999, containing a different offer, which effectively revoked the offer contained in the October quote.

19. The fund's quote was accompanied by a letter from the employer's Human Resources Section, explaining that that particular quote replaced the previous one dated 22 October 1999. The complainant went ahead and unconditionally accepted the second option contained in the latter quote. It is interesting to note that unlike the acceptance of the October quote, the November quote was accepted without any statement reserving the complainant's rights, or any objection whatsoever.
20. Regardless of the context in which the sworn statement referred to in paragraph 10 above was made, it shows clearly that the complainant was aware, when he accepted the November quote in January 2000, that his acceptance was irrevocable. His unconditional acceptance of the second option contained in the November quote is also an indication that such was the option he intended to accept, warts and all.
21. It therefore does not make any sense for the complainant to turn around and complain about the smaller monthly pension, especially since he has conceded in his complaint that he had been informed by the Human Resources Department and the Pensions Office in Johannesburg that the previous quotes were in error.
22. It must also be borne in mind that a statement, or quotation, of benefits, is only an estimate of the benefits that a member can expect to receive, and is for that reason not binding on the fund. As long as the calculation of the benefits complies with the rules of the fund, the Adjudicator cannot set it aside. In the present case, the complainant's benefit fell to be calculated in terms of Special Rule 6, read with Special Rule 4, which read as follows:

6. Early Retirement

A member may retire within ten (10) years of Pension Date with the consent of the employer. The amount of the pension shall be calculated in terms of Special Rule 4, taking into account pensionable service to the date of his retirement, but shall be reduced as determined by the actuary and approved by the trustees with regard to the period by which his date of early retirement precedes his pension date.

4. Normal Retirement

A member retiring at pension date shall receive the sum of:

- (i) a pension of one fifty-fifth of his pensionable salary for each year of pensionable service served subsequent to May 1 1985, and
- (ii) a pension equal to three and one half percent of his annual salary, excluding any non-discretionary bonus payable, earned during each year of pensionable service immediately prior to May 1, 1985.

Provided that no member who immediately prior to May 1, 1985 was a member of the previous pension scheme shall receive a pension, in respect of his pensionable service subsequent to May 1, 1985, of less than he would have received had he continued to be a member of that scheme, determined according to the rules of that scheme in force on April 30, 1985, and his pension date in that scheme had been as defined in these Special Rules.

- 23. The fund has furnished a detailed breakdown of the calculation of the complainant's pension, which was faxed to the complainant on 2 March 2000. I am satisfied that the calculation accords with the rules of the fund, and that therefore, no valid grounds exist for setting it aside.
- 24. The complaint relating to the amount of the pension is, accordingly, dismissed.
- 25. The remaining question that still has to be determined is whether the complainant is entitled to interest on his benefit, and if so, who is liable to pay the same.

26. In our law, a member of a pension fund is not per se entitled to interest on his pension benefits due to withholding by the fund for whatsoever reason. Generally speaking, the pension fund member's claim for interest may only arise from either the rules of the fund, or a contractual arrangement, or the principles of unjustified enrichment:

Brockbank v Argus Pension Fund (1) (2000)11 BPLR 1200 (PFA), at 1204G.

27. In the present case, the rules of the fund are silent on the question of interest. There was also no contractual arrangement between the member and the fund or between the member and the employer, for the payment of interest on overdue pension benefits.
28. General Rule 39 of the fund provides that pensions shall be payable monthly, the first payment being made on the first day of the month following retirement on pension, and shall continue throughout the remainder of the pensioner's lifetime.
29. The liability to pay the pension thus became both due and enforceable on the 1st May 1999, since the complainant had retired on pension on 30 April 1999.
30. Although the complainant effectively withdrew from the fund on 30 April 1999, the employer did not inform the fund of that fact, nor was a termination of membership received by the fund until January 2000. The reason for the delay was the inability of the employer and the complainant to resolve outstanding issues relating to the complainant's previous fund, and the alleged misplacing of the complainant's October 1999 acceptance letter.

31. The fund was thus not aware of the withdrawal, and could not effect payment of the lump sum and the monthly pensions, due to the employer's delay in submitting the retirement notification to the fund. It accordingly is not at fault.
32. Any fault in this matter would seem to rest with the employer. Its failure to process his retirement timeously gives rise to a prima facie inference that it is guilty of maladministration causing prejudice to the complainant. It should therefore make good the loss caused to the complainant by the failure to pay the benefit timeously.
33. However, as the employer has not had a full opportunity to present argument on this aspect, the relief granted is accordingly as follows:

The Second Respondent is ordered to show cause, on or before Monday, 17 September 2001, why it should not be ordered to pay to the Complainant, within six weeks of the date hereof, interest in terms of the Prescribed Rate of Interest Act, on the arrear pensions for the period May 1999 to February 2000, and on the amount of R108 000-00, as from 30 June 1999 to 30 April 2000.

DATED AT CAPE TOWN ON THIS 29TH DAY OF AUGUST 2001.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR