

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

**CASE NO: PFA/GA/1230/00/SM**

**In the complaint between:**

**JOSE PEREIRA PELICIAS**

**Complainant**

**and**

**UNILEVER SA PENSION FUND**

**Respondent**

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

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1. This is a complaint lodged with the Pension Funds Adjudicator on 30 May 2000 in terms of section 30A (3) of the Pension Funds Act of 1956 (“the Act”), concerning the alleged failure of the fund to recognise certain service rendered by the complainant in Zimbabwe as part of the complainant’s continuous pensionable service. The complaint relates to the administration of the fund and the interpretation and application of the fund’s rules, and essentially alleges maladministration and a dispute of law. The complainant basically seeks a declarator that the Zimbabwe service shall form part of his pensionable service, on the contingency of his retirement when his pension benefit becomes due and payable.
2. The complainant is Jose Pereira Pelicias, who worked for Lever Bros Pvt Ltd Rhodesia from 1 June 1973 until Friday 20 January 1978, whereafter he was employed (and remains so employed) by T. Wall & Sons (Pty) Ltd (a Unilever concern) in South Africa as from Monday 23 January 1978. He is a member of the respondent.

3. The respondent is the Unilever SA Pension Fund, a defined benefit fund registered under the Act. A response to the complaint has been submitted by Mr E D Erasmus, principal officer.
4. No hearing was held in this matter and in determining the complaint I have relied on the documentary evidence and submissions and on the investigation of the complaint by my senior investigator, Sue Myrdal, under my supervision.
5. Having completed my investigation I have determined the complaint as follows. These are my reasons.
6. The somewhat complicated history of the fund is set out by Mr Erasmus. He states that the respondent, the Unilever SA Pension Fund (USAPF), was until 1980 known as the Lever Group Pension Fund. According to Mr Erasmus there is a separate section of the fund for members who rendered service in Zimbabwe, known as the USAPF(Z). This is however not reflected in the rules of the fund although there is now a section in the current rules applicable “to members and employers in Zimbabwe”. Mr Erasmus states that at all times USAPF(Z) benefits and contributions were and are denominated in Zimbabwe currency. He states further that in 1973 a locally registered fund, the Lever Group Retirement Fund (LGRF) was established in Zimbabwe, and in 1979 the option was given to members of the USAPF(Z) to transfer to this fund, although the complainant and others elected to retain their membership of the USAPF(Z). It was determined that administration of the USAPF(Z) would continue as before, with two Zimbabwean employer trustees on the board of trustees of the USAPF. Books of account are kept in Zimbabwe and investment decisions taken in Zimbabwe; the two sections are separately accounted for and actuarially valued, with the Zimbabwe employer meeting the balance of costs of funding the USAPF(Z) and the South African employer meeting the balance of costs in funding the USAPF. Mr Erasmus maintains that to all intents and purposes therefore the South African fund and the Zimbabwe section of the fund are two

separate entities, with separate rules governing each section. Mr Erasmus conceded, on being questioned by my investigator, that the rules of the fund do not in fact provide for separate sections but he states that, partly in view of rule 10(6) (quoted hereunder) which provides for payment of contributions and benefits to be in the currency of the member's territory if outside South Africa, the fund was practically speaking divided into two separate administrative entities, effectively constituting, in his view, two funds.

7. The complainant in or about 1978 formed the intention to leave Rhodesia (as it was) and obtain employment with Unilever in South Africa. In doing so it is clear that, with reference to the definition of an employer (which I set out at paragraph 28 below), he would be joining the service of a participating employer in the same fund. He was referred to a Mr Cheney, a trustee of the fund in Rhodesia, for information on how this move would affect his pension. It appears that Mr Cheney informed the complainant verbally that, if he were re-employed by a Unilever concern company in South Africa, with no break in service or pension contributions, he would retain membership in the fund without having to rejoin, thereby retaining his earlier years of pensionable service. Furthermore there was, according to Mr Cheney, no indication that benefits relating to Rhodesian contributions would be "frozen" in the Rhodesian section of the fund, as it was in fact the same fund. Mr Cheney subsequently confirmed in writing to the complainant (on 5 December 1978) that he had given him this specific advice.
8. The complainant states that he acted on this advice and commenced employment in South Africa with a Unilever company, T.Wall & Sons (Pty) Ltd, on Monday 23 January 1978, having left the employ of Lever Bros Rhodesia at the end of the previous working week, on Friday 20 January 1978. His payslips indicate that pension contributions continued to be deducted from his salary and credited on his original pension fund number M15853 for some ten months, whereafter he suddenly received notification as follows from Mr Carter, principal officer of the fund at the time:

"We are writing to confirm that on the termination of your service with Lever Brothers (Pvt) Ltd, Rhodesia, on 20 January 1978 contributions to this Fund ceased and a retirement pension of Rh.\$621,76 a year becomes payable to you from 25 January 2009 when you turn 65 years of age. The contingent widow pension is Rh.\$310,88 per annum.

Your pension is payable in Rhodesian currency and will be paid monthly in arrears in due course.

...We note that you have rejoined the concern in South Africa as from 23 January 1978 and your new Fund number is M19948."

9. The complainant commenced an extensive correspondence with Mr Carter, forwarding to him the letter from Mr Cheney confirming the advice he had given the complainant, and stating, in his letter dated 2 June 1979:

"My decision to join the Unilever Group in South Africa and continue to pay Pension Contributions without interruption was based on the advice and information given to me by Mr Cheney..."

10. On 12 December 1979 the commercial director of T. Walls & Son, Mr D B Mackinnon also wrote on the complainant's behalf, referring to Mr Cheney's advice and stating:

"A break in service of one week-end which did not constitute any break in pension contributions and entails loss of membership continuum does not relate to an employee who for example takes unpaid leave where continuum is not lost yet contributions presumably are interrupted."

11. Although the correspondence was acknowledged there was no response in writing at the time; the complainant advises however that he was "told to leave the matter open". Several years later when the fund was restructuring and setting up a new defined contribution section, he wrote to the principal officer, now Mr Erasmus, on

12 March 1997, referring to these developments and stating that he thought it an opportune time to ask the trustees to reconsider the issue of his pensionable service.

12. Mr Erasmus replied in a letter dated 19 March 1997 that he could not assist, stating

I am afraid Mr Cheney misadvised you about continuous membership of the Unilever S A Pension Fund in South Africa..."

13. Further correspondence ensued. On 16 April 1999 for the first time the fund rule on which the fund based its position of refusing to recognise the complainant's service was quoted to him, in response to his request to be referred to the relevant rule:

10(6) "Notwithstanding the provisions of rule 10(1), the contributions and benefits for members in any territory outside South Africa shall be in the currency of such territory."

Mr Erasmus asserted in his letter to the complainant that the two funds were to all intents and purposes separate entities, and that

"Mr Carter correctly interpreted the rules in South Africa while Mr Cheney was entitled to express a view on the arrangements in Zimbabwe only."

14. The complainant has submitted two certificates of service issued by his current employer which have credited his Zimbabwe service. One is dated 30 July 1984, indicating that he had completed ten years service with Unilever, having "joined the company on 1 June 1973", and the other, dated 1 June 1998, is a "25 year Long Service Award". He has pointed out that if he were to retire at age sixty without the inclusion of his Zimbabwe service, and based on the pension formula of 2% of final pensionable salary for each year of pensionable service, his pension would be approximately 52% of his final salary, whereas if this service were included it would be 62% of his final salary. It is also clear that, since the devaluation of the

Zimbabwean dollar, the deferred pension supposedly payable in Zimbabwe dollars would be worth very little in rand terms.

15. As mentioned, Mr Erasmus has submitted a formal response, with which I deal hereunder. At the end of his response he briefly submits that

“We also believe that after more than twenty years, Mr Pelicias’s complaints have prescribed.”

16. Section 30I governs the time limits for the lodging of complaints. It reads

- (1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.
- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.
- (3) The Adjudicator may on good cause shown or of his or her own motion-
  - (a) either before or after expiry of any period prescribed by this Chapter, extend such period;
  - (b) condone non-compliance with any time limit prescribed by this Chapter.

17. The act or omission to which this complaint relates, from the point of view of the respondent, would be either the supposed misrepresentation made by Mr Cheney or the purported termination of the complainant’s membership of the fund to which he had been contributing in Zimbabwe, both events which took place, as Mr Erasmus states, outside of the time limits prescribed by the Act. In fact however the act or omission to which the complaint relates is inchoate; it has not yet been completed, in

that the complainant has not yet retired and has therefore not yet suffered the prejudice he alleges he will suffer, on the contingency of his retirement, when his retirement benefit becomes due and payable. The act or omission to which the complaint relates, namely the intended refusal to take account of the complainant's service in Zimbabwe, in reckoning the complainant's pensionable service for the purposes of calculating his retirement benefit, is one which can only be completed in the future. He seeks a declarator now to forestall his having to complain at that future time, the matter being of considerable importance to him since the years of pensionable service employed in the calculation will affect the amount of his pension to quite a marked degree. Thus it cannot be said that the matter has prescribed.

18. In fact it is probably because the benefit was not yet due and payable that the fund did not commit itself in writing at the time of the earlier correspondence between itself and the complainant in 1979. This fact and the advice he received to leave the matter open, also goes some way to explaining why the complainant did not pursue the matter at that time, having made several efforts to resolve the dispute. He also made extensive further efforts from 1997 onwards before resorting to my office.
19. In his formal response and by way it would seem of a defence against any allegation of misrepresentation, the respondent also asserts that the complainant should more properly and reasonably have consulted the principal officer of the fund at the time, rather than relying on Mr Cheney, an employer appointed trustee of the fund.
20. Mr Erasmus then makes the following statements

“The Rules of the Lever Group Pension Fund, the previous name of the Unilever SA Pension Fund, in a version effective from 1 January 1965, cover the circumstances when a member terminates service with an employer. *[He refers to rule 19(3), set out in full below]*

Mr Pelicias ceased service with the Zimbabwe employer and thus became entitled to deferred benefits at normal retirement age, in respect of his membership of the fund during the period he rendered service in Zimbabwe. This rule applies equally to the pension benefits accrued

by members resigning from and subsequently rejoining any employer operating in South Africa. There is no continuity of service in such cases, irrespective of the length of time between periods of service. Deferred benefits increase annually in accordance with increases granted to pensions in payment.”

21. Such deferred benefits, according to Mr Erasmus, were payable in terms of rule 19(3), which reads as follows:

- (a) On ceasing service before normal retirement age and –
  - (i) after completion of 5 years’ membership of the fund unless by dismissal for fraud or dishonesty, or
  - (ii) within 10 years of normal retirement age, or
  - (iii) because of permanent ill-health or permanent incapacity, or
  - (iv) because of the winding-up of the member’s employer,

a member shall be entitled, unless the trustees shall decide to apply rule 23, to a retirement pension equal to the fund normal retirement pension and payable from normal retirement age, except that, at the request of the member, the trustees shall substitute a reduced retirement pension payable from such earlier date as the member shall request being not earlier than 10 years before normal retirement age, unless retirement is on account of permanent ill-health or permanent incapacity.

- (b) The amount of the reduced retirement pension shall be equal to the fund normal retirement pension reduced at the rate of 5% a year in respect of the period between the date from which the pension is payable and normal retirement age.”

22. Rule 23 referred to in this rule deals with “Lump sum benefits on ceasing service” and reads as follows:

- (1) If a member ceases service, other than by death and without becoming entitled to a retirement pension under rule 19, he will be paid a lump sum equal to the contributions which he has paid together with an amount calculated in accordance with the following formula:

where X is the total of the contributions the member has paid to the fund, and Y is the number of completed periods of six months for which the member has made such contributions.

- (2) If a member so requests, in accordance with sub-section (4) of rule 19, the trustees in their discretion, subject only to the approval of the principal company, may pay a member who would otherwise be entitled to a deferred retirement pension under sub-section (3) of rule 19, the lump sum referred to in sub-section (1) above, or the trustees may permit the member to commute up to one-third of the deferred retirement pension, or the full deferred retirement pension, if it amounts to less than R120 per annum or such other sum prescribed by legislation in a territory outside the Republic in which an employer carries on business and where a member is resident.
- (3) The trustees in special circumstances and in their discretion subject to the approval of the principal company, may pay to another pension fund on behalf of a member a sum which the actuary certifies to be the value of the member's rights in the fund."

23. Mr Erasmus has also reiterated rule 10(6):

"Notwithstanding the provisions of sub-section(1) hereof [*dealing with the keeping of proper accounts of the fund in South African currency*], the contributions and benefits for members in any territory outside the Republic shall be in the currency of such territory."

and he argues that this is another reason why the complainant cannot have his Zimbabwe service added to his South African service, enabling him to have his pension denominated in rands. The rule

"is a further compelling reason for establishing deferred benefits for members who rendered service in Zimbabwe and who terminate in that country to commence service with an employer in South Africa, even if they are members of the same fund. For practical reasons, benefits need to be separated into those earned in territories outside South Africa and benefits earned in South Africa, in order to define the benefits payable in the currency of each territory."

24. He goes further and states

“while the company has recognised Mr Pelicias’s service for long service company awards, this does not follow through to pension benefits as these are dealt with in the rules of the fund.”

25. Mr Erasmus in fact points out elsewhere that the complainant had only rendered four and a half years’ service when he left Zimbabwe and that therefore he actually should have been, according to the respondent’s logic, paid out in cash in terms of rule 23 and should not have been allowed to defer his benefit in the fund.

26. Mr Erasmus proposes that the best the fund can do is to allow the complainant to withdraw his deferred pension from the Zimbabwe section of the fund now and use the money to purchase additional benefits, provided for by the rules, suggesting that this would not immediately alter his financial position but may give him greater security against the further devaluation of the Zimbabwean dollar.

27. The respondent’s position therefore rests on two assertions: that a member who resigns from and subsequently rejoins any employer (in the context this means an employer within the Unilever group), whether within South Africa or moving from an employer in a territory outside South Africa to one in South Africa, inevitably falls under rule 19(3), there being, according to Mr Erasmus, no continuity of service in such cases; and that furthermore this interpretation is bolstered in light of the fact that rule 10(6) could only practically be given effect to by a member in the latter position ceasing contributions to the Zimbabwe section, acquiring deferred benefits for service rendered service in Zimbabwe, and being obliged to ‘rejoin’ the fund in South Africa.

28. Unfortunately for the respondent the rules of the fund do not bear this position out. Rule 19(3) commences “On ceasing service before normal retirement age...” The

definition of service in rule 4 reads as follows:

“**Service**” shall mean the total period for which the member has been continuously in the employ of any one or more of the employers or associated companies.

“Employer” and “associated company” are in turn defined in rule 4:

“**Employer**” shall mean the principal company and any other associated or subsidiary companies accepted by the principal company and the trustees as being qualified for the purposes of the fund (and which has signed an undertaking to be bound by the rules); and where the context so requires “employer” shall in respect of any member or employee mean the employer employing or having employed such member or employee.

“**Associated Company**” shall mean any of the employers, or Unilever Limited of London, or Unilever N.V. of Rotterdam, or any subsidiary companies of these, or such other company as the trustees may from time to time designate as an Associated Company for the purposes of the rules.”

29. It is clear that both employers for which the complainant worked were “employers” as defined. Both were “qualified for the purposes of the fund”, the employees of each employer being members of the same fund (the respondent).
30. “Pensionable service is as defined in rule 17(1):

Pensionable service shall include the whole period of service during which a person is a contributory member and any additional periods certified by the actuary under rule 16.

For completeness’ sake I set out rule 16 as well:

- (1) The employer may pay into the fund and the trustees accept sums as special contributions and in addition the trustees may accept monies transferred from any other pension or provident fund.

- (2) Any amounts received by the fund under this rule shall be used to provide retirement, widow, child or dependant pensions in accordance with the rules, but no greater part of any such amounts shall be treated as member's contributions for the purpose of these rules than is derived from the member's past contributions.
  
- (3) The benefits so provided shall be expressed as either,
  - (a) additional pensionable service, or
  - (b) additional pensions,and the actuary shall certify the period of additional pensionable service or the amount of the additional benefits allotted.

31. Unless there were any other rule regulating transfers in service these definitions would be conclusive in indicating that, contrary to the respondent's assertions, there *is* continuity of service when a member is employed continuously by one or more of the employers or associated companies. The usage of the word "continuously" in the definition of "service" is not defined, but clearly the fact that service rendered to one "*or more*" of the employers or associated companies is encompassed means that the time taken to move from one employer to another will not constitute a break in continuity; it would not be physically possible to be in two places at the same time, and a reasonable period of time in the circumstances, such as a weekend break as in this case or even a longer period between employers does not detract from the continuity of employment. The "ceasing" of service referred to in rule 19(3) would therefore refer only to the ceasing of the total period of continuous service rendered to any of the employers or associated companies as defined. Similarly, where a member contributes to the fund throughout his service without a break, as the complainant did, it is incontrovertible that "pensionable service" must mean the entire period of service, whether for one or more employer or associated company. The term is unambiguously defined: "Pensionable service shall include the whole period of service during which a person is a contributory member..."
32. No other rule which would indicate otherwise is referred to by the respondent. An examination of the rules reveals only one other rule that refers in any way to

transfers from one employer to another. This is rule 26:

**Transfers in service**

In the event of a member ceasing service with an employer in order to enter the employ of an associated company other than one of the employers, he shall cease to contribute, and the trustees shall either:

- (a) maintain his membership of the fund, or
- (b) where the associated company provides benefits under another pension or provident fund transfer to such fund a sum which the actuary certifies to be the value of all the member's rights in the fund."

33. This rule specifically refers to transfers of employment from an employer to an associated company "*other than one of the employers*". The complainant therefore does not fall within the ambit of this rule because he ceased service with an employer, Lever Bros Pvt Ltd Rhodesia, in order to enter the employ of an associated company, T. Wall & Sons, a Unilever concern which *is* one of the employers. However rule 26 provides an indication of the procedure for handling the transfer of members (transferring voluntarily or involuntarily; no distinction is drawn) in the situation where a member leaves an employer and enters the employ of an associated company where it is no longer possible for him to contribute to the same fund. In such circumstances a member is required to cease to contribute to the fund on leaving the first employer. If the member moves to an associated company which provides benefits under another pension fund, the trustees are obliged to apply (b) above and therefore to "transfer to such fund a sum which the actuary certifies to be the value of all the member's rights in the fund"; failing this they apply (a) and "maintain his membership of the fund", which in the context of his ceasing to contribute must mean establishing a deferred pension.
34. Rule 26 therefore regulates the situation where a member moves to an associated company which is "*other than one of the employers*". Where, on the other hand, a member moves to an associated company which *is* one of the employers, as the complainant did, there is no specific rule regulating the situation. This is not

surprising since, as Mr Erasmus concedes (paragraph 23 above), such a member is a member of the same fund. There is therefore no rule which stipulates that a member must cease contributing in this situation and no reason why he should not remain a member of the fund, his service remaining continuous in light of the definition of “service” in rule 4, and constituting “pensionable service” as defined in rule 17(1).

35. If the service of a member who moves from one employer, as defined, to another within South Africa may be regarded as continuous, is there any reason to treat a member differently if he renders continuous service for employers in territories both outside and inside South Africa? As stated, rule 10(6) provides that “the contributions and benefits for members in any territory outside the Republic shall be in the currency of such territory.” This means that the foreign employer shall make contributions in the foreign currency and that members shall receive their benefits in that currency if, at the time they become due and payable, they remain outside of South Africa. The rule therefore presents no problem if the member is still in the outside territory at the time his benefits become due and payable. Should it be interpreted to mean, however, that a member who continues service by moving to an employer in South Africa from an employer in a territory outside South Africa is obliged to withdraw from the fund by taking a lump sum withdrawal benefit in that territory’s currency if his service is less than five years, or to become a deferred pensioner in that territory if his service is longer than five years, and then obliged to rejoin the same fund starting his pensionable service from scratch?
36. There is to my mind no reason to adopt such an extreme interpretation. I am in agreement with Mr Cheney; rule 10(6) offers no indication

that benefits relating to Rhodesian contributions would be frozen in the Rhodesian section of the fund and that [the complainant] would have to rejoin the fund in South Africa.” (Mr Cheney’s letter dated 5 December 1978 confirming the advice he gave the complainant)

There is no indication in the rules of the fund operative in 1978 that there were two separate funds, or even two separate sections of the same fund. Whether there was an administrative separation is of no consequence; in terms of the rules there is only one fund and one set of rules governing the fund, and determining the benefits to which members are entitled.

37. A fund is obliged to act in terms of its own rules, and may not exercise powers which are *ultra vires*, as is confirmed in the authoritative ruling by Marais JA in *Tek Corporation Provident Fund and Others v Lorentz* 1999 (4) 884 (SCA):

“What the trustees may do with the fund’s assets is set forth in the rules. If what they propose to do (or have been ordered to do) is not within the powers conferred upon them by the rules, they may not do it.”

38. Since there is no provision in the rules for different sections, or for leaving one section and rejoining another, the purported termination of the complainant’s contributions to and membership of the Zimbabwe “section” of the fund is *ultra vires* and consequently no deferred pension should ever have been established for him in Zimbabwe.
39. The rules of the fund of which the complainant was and is a member govern the payment of his retirement pension benefit. This is calculated according to a defined benefit formula, with which I shall deal below, that bears no relation to contributions; in other words it is immaterial where the contributions were paid, how much was paid, etc. As is clear from the rules the only elements to be considered are years of pensionable service, final pensionable pay and the accrual factor specified in the rules.
40. While the subject of the declarator which the complainant seeks is simply the correct number of years of pensionable service to be applied in the formula for the

calculation of the retirement pension payable at normal retirement age, it is instructive to work through the rules and the formula applicable to such retirement pensions in detail, since such an explication illuminates and clarifies the position which has been so overly and confusingly complexified in the complainant's case, incorrectly as I have indicated.

41. Rule 19(1) deals with retirement pensions payable at normal retirement age. This rule and the associated rules which follow are identical in the 1965 version of the rules operative in 1978 and in the current version, apart from revision of the rand/dollar amounts for inflation. Rule 19(1) reads:

“On ceasing service at normal retirement age, a member shall be paid a retirement pension equal to the fund normal retirement pension commencing immediately and continuing for life.”

42. “Normal retirement age” is defined in rule 4 to mean

“age 65, or such other ages as the principal company shall from time to time notify to the trustees to be applied in respect of groups or classes”.

43. It is common cause that the complainant is a member, as defined in the rules, of the respondent fund.

44. The phrase “on ceasing service” must bear the same interpretation as the same phrase in rule 19(3) read with the definition of service, discussed above in paragraph 31, that is, it means on the ceasing of the total period of continuous service in the employ of “any one or more of the employers or associated companies.”

45. Rule 18 sets out the formula for calculation of the benefit. In its current version it reads:

(1) The fund normal retirement pension shall be calculated by deducting from the gross retirement pension calculated as in sub-section (2) any reduction for other rights

determined as in sub-section (3) and adding any additional pensions provided under rule 16.

- (2) The gross retirement pension will consist of:

With effect from 1 May 1996 for each year of pensionable service, 2% of the member's final pensionable pay up to R104 500 per annum (or such greater amount as the trustees with the consent of the principal company shall determine from time to time) and  $12\frac{1}{3}\%$  of the part of the final pensionable pay in excess thereof; provided that the gross retirement pension shall not exceed 75% of the member's final pensionable pay up to R104 500 per annum (or such greater amount as the trustees with the consent of the principal company shall from time to time determine) and  $66\frac{2}{3}\%$  of that part of final pensionable pay in excess thereof; and provided further that, for members employed in Zimbabwe, \$48 000 shall be substituted for R104 500 in this sub-section and for members employed in any neighbouring territory other than Zimbabwe, the amount to be substituted for R104 500 shall be determined by the trustees.

- (3) The "reduction for other rights" shall consist of the annual amount of retirement pension payable from normal retirement age which, with the other benefits corresponding to it under these rules, is certified by the actuary to be equal in value to any state scheme or other retirement or death benefits payable from a source other than this fund which the member has received or to which he has become entitled as a result of his pensionable service, or such lesser amount as the trustees at the request of the principal company shall direct.

- (4) In respect of any pensionable service during which the member is not a contributory member, the scale of benefits set out in this rule may be reduced at the direction of the principal company in accordance with sub-section (2) of rule 17.

- (5) *[Deals with spouse, child and dependant pensions]*

- (6) For purposes of this rule, years of pensionable service shall be calculated to the nearest month, any period of 15 days or more in any broken month counting as a complete month and any period of less than 15 days being disregarded.

46. With respect to sub-section (1) above, it is apparent from a reading of sub-sections (3) and rule 16 that in the complainant's case no deductions or additions would be applicable. The complainant is not eligible for any state scheme or any other retirement or death benefits payable from a source "other than this fund". The deferred pension which supposedly awaits him in the Zimbabwe section of the fund should never have been established, there being no provision in the rules of the fund at the time either for a separate section or for a deferred pension to be established during the course of continuous service; nor is this supposed deferred pension a retirement benefit "payable from a source other than this fund", since it derives from the same fund. Similarly there are no additional pensions as provided for under rule 16 accruing to the complainant deriving from special contributions or monies transferred from any other pension or provident fund.
47. "Final pensionable pay" is defined in rule 4 to mean
- the higher of:
- (a) the annual rate of pensionable pay being earned on termination of service; or
  - (b) the highest average annual pensionable pay over three consecutive years within ten years of termination of service.
48. Once the final pensionable pay is determined, the percentage thereof applicable is easily reckoned in accordance with the formula set out in rule 18(2); obviously it is reckoned in rands since the complainant is employed in South Africa.
49. All that remains is to multiply the resultant figure by the number of years of pensionable service rendered by the complainant, which as I have shown, must be the number of years from commencement of his employment in 1973 until the date of normal retirement age. To date the complainant has rendered 27 years and 8

months pensionable service.

50. Accordingly the order of this tribunal is as follows:

It is declared that, in accordance with the rules, the complainant's pensionable service commenced on 1 June 1973 and has proceeded unbroken to the present day.

DATED at CAPE TOWN this 29<sup>th</sup> day of JANUARY 2001.

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**JOHN MURPHY**  
**PENSION FUNDS ADJUDICATOR**