

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/603/01/NJ

In the complaint between:

E P Schoeman

Complainant

and

Rentmeester Pensioenfonds

Respondent

DETERMINATION IN TERMS OF SECTION 30M 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 of the Act, in particular, whether the trustees have made an equitable distribution as required by the section.
2. No hearing was held in this matter. An investigation under my supervision was conducted by my investigator, Naleen Jeram. In determining this matter I have relied on the documentary evidence and written submissions gathered during the course of our investigation.
3. The complainant is Ms E P Schoeman, of Brackenfell, Western Cape.
4. The respondent is Rentmeester Versekerers Beperk Personeel Pensioenfonds, a pension fund duly registered under the Act (“**the fund**”). The fund is represented by Mr N B Read, the chairman of trustees of the fund.
5. The late Mr Schoeman was employed by the Rentmeester Assurance Limited and

subsequently became a member of the fund. In about 1966, he was married to Ms M Schoeman (born le Roux) and three daughters were born from this union, namely, Jacquilene, Beryl and Stephanie. On 17 June 1996 Mr Schoeman was divorced from Ms M Schoeman. Hereafter, the complainant and the late Mr Schoeman were married to each other in August 1997. However, this marriage was terminated by a divorce order in about July 1998. The complainant and Mr Schoeman re-married in August 1998 and were again divorced in June 1999. On 16 June 2000, Mr Schoeman passed away as a result of a heart failure.

6. Upon the death of the deceased, a benefit of R145,930.84 (before tax) payable by the fund became available for distribution. It is common cause that there are four beneficiaries entitled to share in the distribution. That is, the three major daughters of the deceased, of whom Jacqueline and Beryl were married and the complainant by virtue of being nominated as a beneficiary by the deceased immediately prior to his death. In making an equitable distribution as required by section 37C(1)(bA) of the Act, the fund considered a series of relevant factors. For the purposes of this determination it is unnecessary to repeat all the factors as they have been set out in the annexures attached to the fund's response.

7. Suffice it to say that the material factors considered by the fund were as follows:

7.1. Ms Jacqueline Loubser was 34 years of age and married. Her current monthly income and expenditure revealed that she was just about maintaining her expenses.

7.2. Ms Beryl de Koker was 29 years of age and also married. Her monthly income expenditure (excluding income from her husband) reflected that she needed assistance from other sources to meet her daily expenses.

7.3. Ms Stephanie Schoeman was 26 years of age and unmarried. Her monthly income

and expenditure also revealed that she was maintaining her expenses.

7.4. The complainant on the other hand was 51 years of age and a divorcee. Her monthly income was R5,676.00 as opposed to her monthly expenses of R7,706.00. In addition, she was unemployed.

7.5. At the time of his death, the deceased was not living with any of the beneficiaries and from the evidence it appears as if his contact and relationship with the said beneficiaries were limited and infrequent.

8. Based on all the evidence before the trustees, especially the above factors, the fund decided to award the complainant 40% of the benefit (R58,372.34 (before tax)). The three daughters were each awarded 20% of the benefit (R29,186.17 (before tax)).

9. The complainant was dissatisfied with the decision of the respondent fund. She contended that a greater portion of the benefit ought to have been awarded to herself in light of her age and her being currently unemployed. Furthermore, she argued that two of the daughters were married and all three daughters had secure employment and therefore requested that a smaller portion of the benefit ought to have been awarded to the major daughters.

10. Mr Read acting on behalf of the fund contended that the fund made an equitable distribution as required by section 37C of the Act. In particular, it considered the relative financial status of the parties, their respective ages and their relationship with the deceased. Accordingly, he requested that the complaint be dismissed.

11. As stated, in light of there being dependants and a nominated beneficiary the distribution was regulated by section 37C(1)(bA) of the Act, in terms of which the fund was required to make an equitable distribution amongst the beneficiaries. In making the distribution, the trustees of the fund need to consider the ages of the beneficiaries,

their financial status, their relationship with the deceased, their future earning capacity/potential and their relationship with the deceased. In making their decision, the trustees need to consider relevant considerations and ignore irrelevant factors. Furthermore, they should not fetter their discretion nor should their decision reveal an improper purpose.

12. *In casu*, the trustees had considered a series of relevant factors and have ignored all irrelevant considerations. Their decision to award the complainant only 40% of the benefit and the adult daughters 20% each of the benefit was largely based on the fact that the complainant's financial position was essentially similar to that of the children. However, due to her being 49 years of age as opposed to the relatively younger ages of the children, the trustees decided to award her a greater portion of the benefit. In making their decision, I am satisfied that the trustees have considered all relevant considerations and have not considered an irrelevant factor. Furthermore, the decision is an equitable one as required by section 37C(1)(bA) of the Act. Therefore, there are no grounds permitting me to interfere with the decision and accordingly the complaint is dismissed.

Dated at **CAPE TOWN** this 2nd day of April 2001.

John Murphy

Pension Funds Adjudicator