

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/EC/10/98/JM

In the complaint between:

Estelle Graham

Complainant

and

Mine Employees Pension Fund

First Respondent

Mine Officials Pension Fund

Second Respondent

MPF Management Services (Pty) Ltd

Third Respondent

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

1. The complainant has lodged a complaint contesting the distribution of a death benefit in terms of section 37C(1)(a) of the Pension Funds Act of 1956 and in terms of the rules of the two pension funds involved.
2. No hearing was held in this matter and I have determined it relying exclusively on documentation and written submissions filed with my office.
3. The complainant acts herein on behalf of her two minor children, Neville Graham and Andrew Graham.
4. The first and second respondents are pension funds registered under the Pension Funds Act. The third respondent is a company duly incorporated with limited liability according to the laws of South Africa. The third respondent provides administrative and support services to the first and second respondents.

5. The complainant's late ex-husband was a member of the first and second respondents and had 23 years and two months of qualifying service. He died on 18 May 1997 at the age of 47 as a result of injuries in a motorcycle accident. At the time of his death he was employed as an assistant manager of the rescue training services at the Chamber of Mines.
6. The deceased was survived by his wife, Mrs Illona Graham and his two minor children, Neville and Andrew Graham.
7. The deceased was married to the complainant for the period 3 January 1976 until their divorce on 25 August 1995 after 19 years of marriage.
8. The deceased married his second wife, Mrs Illona Graham, six months after his divorce from the complainant on 27 February 1996. They were married for one year and three months at the time of his death. No children were born of their marriage.
9. As a result of the deceased's death both a widow's and children's pensions became payable as well as certain lump sum benefits. The monthly widow's pension of R3,945,90 was awarded to the deceased's widow, Mrs Illona Graham, and is payable until her death. The children's pensions of R985,39 were awarded to the complainant in her capacity as guardian, and are payable in each case until the child reaches the age of 18. Neville reached this age on 24 July 1997 while Andrew will do on 24 January 2001.
10. A lump sum benefit of R445 161,08 stood to be apportioned amongst the deceased's dependents in terms of section 37C of the Pension Funds Act. It is the distribution of this amount which is in contention and which forms the subject matter of this complaint.

11. Besides these amounts, the deceased's dependents were entitled to share in the proceeds of a group personal accident insurance policy in the amount of approximately R727,000.00. The distribution of this amount does not fall within the provisions of section 37C and is distributed at the discretion of the Chamber of Mines. After certain representations were made to the Chamber by the complainant, the Chamber decided to apportion the proceeds of the policy as follows:

Mrs Ellona Graham	40%	R290,800.00
Neville Graham	26.58%	R193,236.60
Andrew Graham	33.42%	R242,963.40

12. In addition to the group personal accident policy and the death benefit, the deceased had a group life policy the proceeds of which being in the proximity of R500,000.00 were distributed to a trust to be held on behalf of the two minor sons.
13. On 18 September 1997 the claims committee of the two pension funds considered the claims of the deceased's dependents for the purpose of exercising its discretion under section 37C(1)(a) of the Act. The circle of dependents was limited to Mrs Illona Graham and the minor children Neville and Andrew. The complainant does not qualify as a dependent in terms of the Act. She forfeited any claims to maintenance in terms of the divorce order and was not financially dependent on the deceased at the date of death.
14. On the basis of the evidence placed before it, the committee decided to distribute the benefit in the portion of 50% to Mrs Illona Graham, 22% to Neville and 28% to Andrew. At this point, the committee had been advised that the entire proceeds of the group personal accident insurance policy were to be awarded to Mrs Illona Graham. However, the Chamber's nominee on the committee requested that the matter be stood down, until the decision regarding the insurance policy was reviewed following personal representations which had been made by the complainant. When subsequently it was decided to apportion the proceeds of the

policy between the three dependents, the committee revisited its earlier decision and resolved to apportion the death benefits in the following proportions:

Mrs Ellona Graham	60%	R267,096.64
Neville Graham	17%	R75,777.38
Andrew Graham	23%	R102,387.04

Taken together, this means that as a consequence of the deceased's death, his wife received R557,897.00, whereas his children received R614,264.00, plus the proceeds of the group life policy of approximately R500,000.00.

Nevertheless, the essential question remains whether the distribution of the death benefit in the proportions of 60% to the wife and 40% to the children was a proper exercise of the committee's discretion in terms of section 37C which requires the fund to pay a benefit to the dependents 'as may be deemed equitable by the board'.

15. The claims committee took its decision to distribute the death benefit as set out above on 6 November 1997 and has furnished me with a comprehensive report giving clear insight into the considerations which it took into account and the motivation for its decision. The committee is to be commended for its transparency and the thoroughness of its report. From this it is apparent that the committee clearly applied its mind to the question and took into account all relevant considerations. These can be summarised as follows:

- 15.1 The wife of the deceased also sustained injuries in the accident in which the deceased was killed. As a consequence she suffered a loss of income for a period of 4 months. She was employed as a temporary employee on an hourly basis since February 1996. As a result of the accident she is receiving ongoing therapy. Her gross salary was in the amount R4,600.00 per month but she receives other income from different sources. Her total monthly income was in the amount of R10,725.00 whereas her monthly

expenses amounted to R12, 405.00. There is clear evidence that she (Mrs Illona Graham) assisted the deceased in meeting his maintenance obligations in relation to the children and in fact was owed R52,000.00 by the deceased, being monies she had lent him for the purpose of meeting his maintenance expenses for the children.

15.2 With regard to the children, the committee received submissions and a report from the complainant's accountants and attorneys pertaining to the projected future costs of their maintenance. Both children at that time were in a private school in Grahamstown. Their school fees amounted to approximately R50,000.00 per annum, although they had been awarded partial bursaries. The documentation submitted by the chartered accountant stipulated that if each son were to be provided with a motor car and capital to start a business she would require about R280,000.00 in the year 2002 for Neville and R435,000.00 in 2006 for Andrew. The accountant estimated that were the group life policy to be utilised for the boy's private schooling plus four years study at Rhodes, they would only have capital of R157,063.00 remaining. The calculation would seem to exclude the application of their portion of the personal accident policy and the death benefit.

15.3 The complainant is employed as an estate agent and at the time of the distribution clearly experienced some financial difficulties. Nevertheless, the evidence shows that the Chamber of Mines paid R25,000.00 to her for the purpose of school fees. She was furthermore the recipient of the proceeds of two Old Mutual policies on the deceased's life in the amount of R50,000.00 which she used to reduce her home loan. She was also the sole heir of the deceased's estate, the value of which was not known at the time of the distribution. There was some evidence that the divorce between the deceased and the complainant was acrimonious and that the deceased had intended to amend his will in the week of his death in order to favour his

new wife. However, because this matter was not finalised at the time of his death his previous wife remained his sole heir.

16. On the basis of this information, the committee decided it was equitable to award the widow a sizable share of the death benefit payable by the fund. Particular regard was given to:

- the recognition that Mrs Illona Graham deserved as a widow;
- the lifestyle she had become accustomed to as a result of her marriage;
- the fact that the member died unexpectedly before signing a new will;
- the deterioration in her health caused by the accident; and
- the fact that the minor children had benefited from generous awards made from the policies payable.

For that reason it apportioned the benefit as set out above in the amount of 60% to the widow and 40% to the children.

17. The complainant maintains that her minor children have been prejudiced and unfairly discriminated against by the decision.

18. The enquiry into whether the board of management of a pension fund has exercised its discretion properly in terms of section 37C is essentially an enquiry into the reasonableness and rationality of the decision. Broadly speaking, one asks whether the board of management has properly applied its mind to the matter with reference to the basis, purpose and effects of the decision. One has regard to the information upon which the decision maker relied and determines whether proper consideration has been given to all relevant factors and that irrelevant factors have been excluded. The decision should also not be motivated by an improper purpose.

19. There is ample evidence before me that the committee did a thorough investigation

of the circumstances of all the dependents and the complainant and based their decision upon it. In so doing, it took into account all relevant considerations and does not appear to have been influenced by irrelevant considerations. There is no allegation or any evidence that it has been motivated by an improper purpose.

20. The decision of a board of management in a situation such as this is unenviable and difficult. Their task is to strike a balance between the competing needs of the different dependents. Clearly by virtue of the group life policy and the distribution of the proceeds of the group personal accident policy, the deceased's minor children have been adequately catered for. The children appear to be well educated and with the financial provision left by the deceased they will start adult life with a significant advantage and good future prospects. The deceased's widow, on the other hand, is well into middle age and faces the prospect of a deteriorating medical condition as a consequence of her accident.
21. As for the complainant, one does have a measure of sympathy for her. After 19 years of marriage she has benefited little from the deceased. She has received the proceeds of two insurance policies and is the sole beneficiary under the deceased's estate. However, her relative disadvantage is an irrelevant consideration because by virtue of the divorce she is not a dependent as defined in the Act and is thus not entitled to share in the distribution. The committee was evidently mindful of this fact and appears to have excluded her from consideration except to the extent that she was required to provide maintenance for the children.
22. The complainant has made something of the fact that the deceased's widow enjoyed financial provision as a consequence of her divorce from her previous husband and claims that this should be taken into consideration in the distribution of the benefit. Although this may be a relevant consideration, I do not believe it deserves such weight as to alter the basis of the distribution in the present circumstances. Insofar as an argument may be made out that the fairest distribution would have favoured the children more than the committee's decision, the test on review is not whether the distribution was done on the fairest terms but

rather whether the committee had acted reasonably in applying its collective mind to the matter. For the foregoing reasons, I am satisfied that the committee gave proper consideration to all the relevant factors and that its decision fell within the range of reasonable pension fund practice.

23. For the foregoing reasons, the complaint is dismissed.

Dated at CAPE TOWN this 1st day of NOVEMBER 1999.

John Murphy

Pension Funds Adjudicator