IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO:PFA/GA/949/99/JM

In the complaint between:

PWA Jansen van Vuuren	**First Complainant**
E Albertse	**Second Complainant**
LHF Blignaut	**Third Complainant**
J A Jooste	**Fourth Complainant**
MF Toerien	**Fifth Complainant**
PA van den Berg	**Sixth Complainant**
J Richter	**Seventh Complainant**
DJ Gresse	**Eighth Complainant**
AJ Lamprecht	**Ninth Complainant**
N Head	**Tenth Complainant**
IMATU	**Eleventh Complainant**

and

Municipal Employees Gratuity Fund **Respondent**

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

---

1. This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956 (**"the Act"**). The individual complainants are all erstwhile members of the respondent, erstwhile employees of the Western, Northern or Eastern Substructures of the Greater Johannesburg Metropolitan Council (**"the employer"**), and previously members of the Eleventh Complainant (**"the Union"**) until their redundancy and retrenchment.

2. The union has an interest in this complaint, as it acted on behalf of the individual complainants throughout, and it has an interest that the fund complies with its rules, the Act and other applicable laws.

3. The respondent is a pension fund registered in terms of the Act to carry on business as a pension fund.

4. No formal hearing was held in this matter. Nevertheless an informal hearing was held on 9 October 2000 at the Land Claims Court, Randburg. At the informal hearing I spoke to the parties separately and discussed with them various aspects of their respective cases. Subsequent thereto, the parties have made additional written submissions. Accordingly, in determining this matter I have relied exclusively on the documentary evidence, and certain written submissions made before and after the informal hearing. At the hearing I indicated that I would consider handing down a preliminary determination. However, after receiving additional submissions I am satisfied that a final determination is more appropriate.

5. The complainants were represented by Mr H F Kocks of Kocks and Dreyer attorneys, Edenvale. The respondent was represented by Ms A P van der Merwe of Coetsee van Rensburg attorneys, Sandton.

6. The complaint alleges a breach of duty on the part of the officials of the fund in the form of a misstatement of relevant financial information made during the course of settlement negotiations between the complainants and the employer, inducing them to settle the termination of their employment on disadvantageous terms.

7. The complaint needs to be understood within the context of the restructuring and transformation of local government in South Africa, which took place immediately before and after the election of 1994. Around this time many local authorities and their associated funds introduced generous retrenchment benefits for members compelled

to withdraw from the funds as a consequence of their dismissal on operational or restructuring grounds. The amended rules aim to secure a safety net for employees potentially facing retrenchment, either by making their dismissal too expensive, or by providing them with a substantial termination package to tide them over any period of unemployment.

8. The fund in this instance is a defined contribution fund. With effect from 15 December 1994, members retrenched from a local authority in terms of rule 34(2) receive from the fund what is regarded as the normal retrenchment benefit in a defined contribution fund, namely, the member's fund credit. Additionally, by virtue of an amendment to rule 34(2) an extra amount is payable by the local authority, rather than the fund. Initially, the enhanced benefit was a percentage of the member's original transfer value calculated with reference to years of completed service. However, the rule was amended again on 23 February 1998, with an effective date of 1 November 1997, to provide for an enhancement of up to100% of the member's fund credit payable by the employer. It is this final version of the rule which is at the core of the present dispute. As it currently stands, the relevant part of the rule reads:

> **(2) Redundancy or Retrenchment**
>
> If a MEMBER'S service is terminated owing to a reduction in, or reorganization of staff, or to the abolition of his post, or in order to effect improvements in efficiency or organization or as the result of his having been declared redundant or having been retrenched, and –
>
> (a) he has at least ten years' SERVICE, he shall be entitled to:
>
> (i) the MEMBER'S FUND CREDIT;
>
> plus
>
> (ii) an amount payable by the LOCAL AUTHORITY concerned, being the lesser of-

(aa) the difference between the MEMBER'S NORMAL RETIREMENT DATE and his age on his nearest birthday, multiplied by 8 per cent, multiplied by the MEMBER'S FUND CREDIT;

or

(bb) 100 per cent of the MEMBER'S FUND CREDIT;

Provided that the amount payable by the LOCAL AUTHORITY in terms of this paragraph (ii) may be reduced if the MEMBER agrees thereto in writing.

9. All the complainants have more than 10 years service and thus this is the rule applicable in the determination of their retrenchment benefit. The benefit is payable as a lump sum, and because the fund is a local authority fund, was subject to favourable tax treatment. In effect most of the complainants were entitled to approximately double their fund credit on redundancy since most of them were more than 12 years short of their retirement date.

10. During the course of 1997 – 1998 a dispute arose between the union complainant, acting on behalf of the individual complainants, and the Greater Johannesburg Metropolitan Council and its substructures regarding the alleged redundancy of the individual complainants, and their entitlement to benefit in terms of rule 34(2) above.

11. The complainants applied for relief in the Witwatersrand Local Division of the High Court. The fund was a respondent in these applications but gave notice that it would not oppose the relief sought and would abide by the High Court's decision.

12. On or about 28 April 1998, various parties attended a meeting to discuss the possibility of a settlement in respect of the various court applications. The complainants allege that during this meeting reference was made to the amendment to rule 34(2) and in particular to the proviso to the rule which permits the enhanced benefit payable by the

local authority to be reduced by means of an agreement in writing. The proviso created the possibility for the parties to reach a compromise on the question of the individual members' redundancy by the employer agreeing to pay reduced enhancements.

13. After these initial discussions, negotiations were conducted over a period of months. On 29 July 1998, telephonic enquiries were made on behalf of the individual complainants to the fund as to the amounts of their fund credits and gratuities at that stage. Mr Venter, a trustee of the respondent, telephonically furnished the complainants with the information regarding the fund credits and the enhanced benefit payable by the council. These figures are reflected in an undated letter addressed by the fund to the town treasurer with the purpose of informing the employer of its obligation in the event of a retrenchment. The letter reads:

> RETRENCHMENT AS A RESULT OF REORGANISATION
>
> With reference to your enquiry dated 30 June 1998, we wish to advise as follows:
>
> If the undermentioned persons are retrenched as a result of reorganization in terms of the provisions of section 34(2) of the Rules of the Fund on 31 July 1998, the following benefits will be payable to each:

PF	NAME	REASON FOR RETIRING	AGE ON DATE OF RETIREMENT	PENSIONABLE SERVICE	GRATUITY	COUNCIL'S OBLIGATION
29458	JA Jooste	Reorganisation	4y/6m (*sic*)	17y/6m	1 637 979,18	818 989.59
31804	PA van den Berg	Reorganisation	47y/6m	23y/11m	2 900 211.53	1 524 444.89
31577	LHF Blignaut	Reorganisation	50y/10m	25y/7m	3 245 818.72	1 692 167.74
31565	E Alberts	Reorganisation	50/10m	27y/8m	5 672 108.88	2 874 209.10
43854	N Head	Reorganisation	43y/11m	12y/4m	910 062.30	455 031.15
18566	MF Toerien	Reorganisation	50y/3m	14y/10m	1 161 566.40	580 783.20
31232	AJ Lambrecht	Reorganisation	44y/8m	13y/11m	901 861.15	479 718.70
34864	J M Richter	Reorganisation	60y/1m	33y/1m	3 586 776.62	1 124 808.27
34867	WJS Spangenberg	Reorganisation	42y/5m	18y/10m	983 981.11	562 016.40
44516	DJ Gresse	Reorganisation	59y/5m	31y/4m	5 231 193.24	1 729 251.58
16846	PWA Jansen van Vuuren	Reorganisation	51y/1m	28y/9m	3 416 604.55	1 841 741.35 13 683 162.01

With regard to the above-mentioned benefits, the Council has to pay a part of the gratuity in terms of Section 34(2)(a)(ii), which amounts to R13,683,162.01.

Should the Council decide to retrench the above-mentioned positions as a result of reorganization, the amount of R13,683,162.01 is payable to the Fund. In terms of Section 34(2)(a) , the Fund may not pay benefits before the Council's obligation is received by the Fund. Therefore, the council's obligation must be received by the Fund on or before the last working day of the concerned members. Section 34(2)(a) reads as follows:

> "Provided that, if a LOCAL AUTHORITY declares a MEMBER redundant or retrenches a MEMBER, the LOCAL AUTHORITY shall pay the percentage payable in terms of paragraph (ii) hereof to the FUND before such MEMBER shall be deemed by the FUND to have been declared redundant or retrenched in terms of this section 34;"

If the Council delays the partial payment of the gratuities to the Fund after date of retirement, the Committee will be entitled to charge interest on the outstanding amount calculated from the date on which the amount was due to the date on which the payment is received by the Fund.

Please note that these are preliminary figures and that the member's benefit as well as the council's obligation will be adjusted before the final calculation. The council and members should realize that these values could be adjusted upwards or downwards. Final calculations of the member's benefits as well as the council's obligation will be forwarded to you as soon as it is available

Above-mentioned figures are subject to auditing

14. There is some dispute about when the letter was sent, but nothing turns on it. The complainants claim that the fax was sent after the telephone conversation and that it confirms the figures given to them telephonically by Mr Venter. The fund, on the other hand, claims that the letter was sent two days earlier and that Mr Venter may have relied on it to communicate the amounts verbally.

15. The complainants eventually decided to settle the litigation on payment of reduced amounts as provided for in the proviso to rule 34(2), and based their calculations on the figures provided telephonically. Messrs Richter and Toerien agreed to reduce the amount payable by the employer to the fund by an amount of 40%, while the other individual complainants agreed to reduce the employer's portion by 50%. The settlement was reduced to writing and signed on 14 August 1998. The terms of the settlement are of importance and I shall return to them at a later stage.

16. When it came to implement the settlement, the fund addressed a further letter to the town treasurer on 19 August 1998 in which it gave different figures to those in the undated facsimile. In this letter the only figures provided are those reflecting the employer's obligation or enhancement. This letter reads:

RETRENCHMENT AS A RESULT OF REORGANISATION

With reference to your enquiry dated 5 August 1998, we wish to advise as follows:

If the undermentioned persons are retrenched as a result of reorganization in terms of the provisions of section 34(2) of the Rules of the Fund on 31 August 1998, the following benefits will be payable to each:

PF	NAME	REASON FOR RETIRING	AGE ON DATE OF RETIRE MENT	PENSION ABLE SERVICE	COUNCIL'S OBLIGATION
31565	E Alberts	Reorganisation	50/11m	27y/9m	2 622 815.89
31577	LHF Blignaut	Reorganisation	50y/11m	25y/8m	1 574 570.81
44516	DJ Gresse	Reorganisation	59y/6m	31y/5m	1 502 219.69
43854	N Head	Reorganisation	44y	12y/5m	399 774.64
16846	PWA Jansen van Vuuren	Reorganisation	51y/2m	28y/10m	1 773 000.50
29458	JA Jooste	Reorganisation	43y/7m	17y/7m	742 355.27
31232	AJ Lambrecht	Reorganisation	44y/9m	14y	444 854.94
34864	J M Richter	Reorganisation	60y/2m	33y/2m	1 055 190.52
34867	WJS Spangenberg	Reorganisation	42y/6m	18y/1m	542 664.75
18566	MF Toerien	Reorganisation	50y/4m	14y/11m	527 711.11
31804	PA van den Berg	Reorganisation	47y/6m	24y	1 414 009.37
Total					12 599 167.49

With regard to the above-mentioned benefits, the Council has to pay a part of the gratuity in terms of Section 34(2)(a)(ii), which amounts to R12,599,167.49.

Should the Council decide to retrench the above-mentioned positions as a result of reorganization, the amount of R12,599,167.49 is payable to the Fund. In terms of Section 34(2)(a), the Fund may not pay benefits before the Council's obligation is received by the Fund. Therefore, the council's obligation must be received by the Fund on or before the last working day of the concerned members. Section 34(2)(a) reads as follows:

> "Provided that, if a LOCAL AUTHORITY declares a MEMBER redundant or retrenches a MEMBER, the LOCAL AUTHORITY shall pay the percentage payable in terms of paragraph

(ii) hereof to the FUND before such MEMBER shall be deemed by the FUND to have been declared redundant or retrenched in terms of this section 34;"

If the Council delays the partial payment of the gratuities to the Fund after date of retirement, the Committee will be entitled to charge interest on the outstanding amount calculated form the date on which the amount was due to the date on which the payment is received by the Fund.

The difference has come about because of 1997 bonus declared and transfer of reserve funds from the Joint Municipal Pension Fund.

17. The following table shows the benefit which the individual complainants would have received had the reduced enhancement been calculated on the original figures supplied, and compares it to the actual settlement they received, being the fund credit plus a percentage of the enhancement based on the figures in the letter of 19 August 1998. The aggregate difference in respect of all the complainants is some R1.3million less.

	Settlement ito Rule 34(2) based on amounts	Actual settlement received ito reduced amounts*	
PA van den Berg	2,138,989.00	1,972,439.00	166,550.00
MF Toerien	929,253.12	844,337.77	84,915.35
JA Jooste	1,228,484.39	1,113,532.90	114,951.49
E Albertse	4,235,004.33	3,858,149.79	376,854.54
LHF Blignaut	2,399,734.85	2,223,489.98	176,244.87
PWA Jansen van Vuuren	2,495,733.93	2,407,701.93	88.032.00
J Richter	3,136.852.41	3.067,467.41	69,385.00
DJ Gresse	864,625.79	751,109.85	113,515.94
AJ Lamprecht	239,859.35	222,427.47	17,431.88
N Head	204,538.71	124,580.02	79,958.69
	17,873,075.88	16,585,236.12	1,287,839.76
*NB-Excludes severance, leave pay, etc added on later in terms of Addendum to Settlement			

18. The respondents have offered the following explanation for the differences in the calculations. During 1997 a dispute existed between the fund and the Joint Municipal Pension Fund relating to the actual transfer values of members who during the period 1 January 1994 to 30 June 1996 elected to transfer membership from the Joint Municipal Pension Fund to the fund. When the dispute was settled, the Joint Municipal Pension Fund transferred an amount of R510 million for the benefit of the respondent's members. The dispute was settled on 28 May 1998 and each member, including the complainants, became entitled to a proportionate share of the additional transfer. A committee was appointed to settle the basis upon which the amount paid by the Joint Municipal Pension Fund was to be apportioned. With the stated aim of protecting the interests of the employers and the members, a decision was taken on 3 June 1998 that when information concerning members' fund credits was to be furnished to local authorities the amounts furnished would be increased by 30%. The idea was to provide for additional bonuses as well as for allocations arising from the settlement. It was impossible for the fund at that stage to determine the additional amounts by which the fund credit of each member was required to be increased. When at a later stage it became possible to calculate the figures more accurately, it transpired that the 30% figure was too high and reductions were made. Thus the discrepancy. The eventual adjustments to the fund credits were effected on or about 1 September 1998.

19. It is the complainants' case that the failure to disclose that the figures communicated telephonically at the end of July 1998 were in fact inflated estimates was a breach of the board of management's duty to ensure that adequate and appropriate information was communicated to the complainants. It is further alleged that the board of management and the officials of the fund failed to observe the utmost good faith and to exercise propriety and diligence to ensure that the complainants had all the appropriate and relevant information before taking the decision whether to reduce the employer's enhancement benefits for the purpose of settlement.

20. The respondent has put forward a substantial defence along the lines that the information originally provided was at all times qualified and subject to auditing. The attitude evinced by the fund in this regard suggests a failure on its part to understand its fiduciary duties. For instance, it argues that to expect accurate amounts to be provided by the fund on each an every occasion whenever there is an enquiry by a member would be unreasonable and onerous. A somewhat artificial argument is advanced that members ought reasonably to be aware that a quoted amount is subject to auditing. The case is built upon historical information, mainly benefit statements and letters, some addressed to the member's, others not, reputedly putting the members on warning despite not addressing any specific request. The argument largely ignores or diminishes the duty of a board of management to provide adequate and appropriate information and to act with due care, diligence and good faith. The essence of the fund's argument is that the complainants should have been aware that the respondent would not provide adequate and appropriate information to them, that it would not act with due care, diligence and good faith, and that the members should accordingly be skeptical of the information provided by the fund. Such an argument, it would seem to me, seeks totally to negate the duties imposed by the Pension Funds Act.

21. In fairness to the fund, it does deny that it was aware of the state of affairs of the litigation between the complainants and their employer, and that the information requested telephonically was required for the purpose of settlement negotiations between the parties to the litigation. However, it still has not offered any convincing explanation as to why it neglected to inform the complainants at the time that the figures were inflated by 30%. However, there are indications that the union and its members were aware that an adjustment to the fund credits was in process.

22. It would seem to me therefore that the fund has fallen short in its duty to provide appropriate and adequate information. Had that been the end of the matter, the fund could have been held liable for the shortfall, provided a causal link was established

between the misstatement and any prejudice. In the light of what follows, I do not consider it necessary to comment extensively upon the respondent's arguments in relation to causation. Suffice it to say that before the respondent can be held liable for breach of statutory duty, the complainants have to show that the breach caused them prejudice or loss. The fund argues that the complainants were all senior officials and played an active part in the negotiations around termination benefits. It is submitted that the complainants in all probability would have settled on the same terms had they been given the correct information initially. The lapse in furnishing the correct information, it is argued, has therefore caused the complainants no loss. The complainants deny this. For the reasons which follow it is unnecessary to decide the point.

23. I am satisfied that no liability attaches to the fund on account of the terms of the settlement entered into between the parties. The original settlement agreement between the complainants and the respondent was in the form of a multilateral agreement involving various local authorities, the union, the complainants, the fund and a further pension fund ("the Johannesburg fund") and three other employees referred to as the "Johannesburg employees". In the settlement agreement the complainants are referred to as the "Transvaal employees". The reference to the "Transvaal Fund" is a reference to the respondent. The agreement records that the employment of the complainants terminated on 31 August 1998 on grounds of retrenchment. Clause 3.2 of the settlement agreement provides:

> The Transvaal employees shall receive the following:
>
> 3.2.1 the benefits due to them in terms of rule 34(2) of the rules of the Transvaal Fund; provided that any amount payable to the Transvaal Fund by the Councils shall be reduced in terms of the provisions of rule 34(2) by an amount of 40% in the case of Richter and Toerien, and by an amount of 50% in the case of the remaining Transvaal employees;
>
> 3.2.2 the severance benefits to which they may be entitled in terms of clause 17.4.8 of the

applicable conditions of service; provided that they shall not receive any payment in respect of clause 17.4.8.8 of the conditions of service.

24. Clause 6 of the agreement is a settlement and waiver clause. It reads:

SETTLEMENT

6.1 The provisions of this agreement constitute a full and final settlement of all and any claims of whatsoever nature which the Johannesburg employees and the Transvaal employees may have against the Councils of any one of the Councils, the Johannesburg Fund and the Transvaal Fund arising from their contracts of employment or the termination thereof, whether such claims arise in contract, delict, statute or otherwise.

6.2 In particular, but without derogating from the generality of 6.1 above, the Johannesburg employees and the Transvaal employees shall have no claim against the Councils in relation to any alleged unfair labour practice or unfair dismissal, or in respect of any amounts payable or alleged to be payable by the Councils to either the Johannesburg Fund or the Transvaal Fund other than in terms of this agreement.

25. The settlement agreement was signed by the complainants on 14 August 1998 in Johannesburg. On or about 30 October 1998, the complainants and the respondent signed an amendment described as addendum to the agreement. The terms of the amendment read as follows:

1. **INTRODUCTION**

1.1 The parties to this addendum entered into an agreement on or about 14 August 1998 (“the August agreement”) regulating the termination of employment of the Transvaal employees.

1.2 The parties wish to amend the terms of the August agreement.

2. **BENEFITS PAYABLE TO THE TRANSVAAL EMPLOYEES**

2.1 This clause replaces the provisions of clause 3.2 of the August agreement.

2.2 The Transvaal employees shall receive the benefits due to them in terms of Section 34(2) of the Rules of the Gratuity Fund provided that the amounts payable to the Gratuity Fund by the Councils in respect of each of the Transvaal employees shall be reduced in terms of the provisions of Section 34(2)(b) to the following amounts:

Name	Amount payable to the Gratuity Fund by the Councils in terms of Section 34(2)(b) of the fund rules
1. PA van den Berg	830 833.08
2. MF Toerien	388 597.14
3. JA Jooste	499 800.96
4. E Albertse	1 450 799.45
5. LHF Blignault	914 692.87
6. PWA Jansen van Vuuren	993 596.45
7. J Richter	666 978.18
8. DJ Gresse	813 420.12
9. AJ Lamprecht	315 955.12
10. N Head	238 793.11

2.3 The Transvaal employees shall not be entitled to any severance benefits in terms of Clause 17.4 of the applicable Conditions of Service.

3. **INDEMNITY**

Each of the Transvaal employees hereby agrees to hold the Councils and the Gratuity Fund harmless and indemnified in respect of any claim for tax arising out of this agreement for which the Councils or the Gratuity Fund may be held or found to be liable.

26. The explanation for the necessity of the amendment is not as clear as it could be. It seems that the parties wished to structure the termination package to best advantage for the complainants from a tax perspective. This involved the complainants forfeiting their severance benefits (clause 2.3 of the addendum) and then increasing the amount payable by the employer to the fund in terms of rule 34(2). It then became necessary to specify precisely and in figures the actual amount agreed to be paid by the employer

in terms rule 34(2). In the settlement agreement of August 1998 it was agreed that the amount payable by the local authority would be reduced by certain percentages, being 40% in the case of Richter and Toerien and 50% in respect of the remaining individual complainants. In clause 2.2 of the addendum to the settlement agreement entered into in October 1998, the percentage reduction in the amounts payable by the local authorities to each of the individual complainants was translated into specific amounts, which included the agreed percentage based on the non-inflated figures and to which was added the severance benefits. The clause states quite clearly that amounts payable to the fund by the councils in respect of each of the complainants shall be reduced in terms of the provisions of section 34(2)(b) (of the rules) *to the following amounts*. As a result, each complainant was in a position to calculate the total amount of the benefit he would receive. From the figures it was possible (because each complainant knew the amount of his severance benefit) to derive the actual amount the employer was prepared to agree to as its obligation under the proviso to rule 34(2)(a). And it was further possible to derive the fund credit payable from the amount of the employer's additional enhancement by virtue of the latter being expressed as a percentage of the former.

27. In other words, the percentage reductions provided for in the 14 August 1998 agreement were substituted with the actual amounts payable, which were in turn based on the actual amounts quoted in the letter of 19 August 1998, being the lower figures and not the inflated figures in the undated letter of July 1998 communicated in the telephone conversation of 29 July 1999. On accepting the amounts stipulated in the addendum, each complainant by implication accepted the amounts of the enhancement and the fund credit. One must concede that the matter was made difficult by the fact that the amounts stipulated in the addendum included the severance benefits. Still, the calculation was not beyond reasonable effort. The respondent furnishes the following examples to illustrate the point:

Jooste

- In the letter of 19 August 1998 the council's obligation is reflected as R742,355.27, which amount equals the aggregate of the amount of Mr Jooste's net fund credit, housing loan and his proportionate share of the Johannesburg Municipal Pension Fund amount.

- The 50% reduction in the council's obligation agreed to by Mr Jooste in the 14 August 1998 agreement and which was translated to a fixed amount in clause 2.2 of the addendum amounts to R371,177.64 (R742,355.27 x 50%). In clause 2.2 of the addendum of October 1998 the amount is, however, reflected as R499,800.95 which amount includes an amount paid in lieu of severance benefits as provided for in the conditions of employment (but excluding pension benefits) of R128,623.31.

Lamprecht

- In the letter of August 1998 the council's obligation is reflected as R444,854.94, which amount equals the aggregate of the amount in Mr Lamprecht's fund credit, housing loan and his proportionate share of the Johannesburg Municipal Pension Fund amount.

- The 50% reduction in the council's obligation agreed to by Mr Lamprecht amounts to R222,427.47 (R444,854.94 x 50%). In clause 2.2 of the addendum the amount is however, reflected as R315,965,12, which amount includes an amount in lieu of severance benefits as provided for in the conditions of employment of approximately R93,537.65.

28. It needs to be remembered that when negotiating the addendum, the individual complainants were represented by their union and its legal representatives. Moreover,

most of the complainants were senior employees, some with legal training and experience. They each had had sight of various documents containing information concerning the computation of the different amounts, including particularly the letter of 18 August 1998 reflecting the final adjusted figures.

29. Only clause 3.2 of the 14 August 1998 agreement was amended by a substitution thereof with clause 2.2 of the addendum. The remaining provisions of the agreement of 14 August 1998 remained applicable. In particular the provisions of clause 6.1 continued to apply. This clause provides that the agreement constitutes a full and final settlement of all claims of whatsoever nature which the individual complainants may have against the councils and the funds arising from their contracts of employment or the termination thereof, whether such claims arise in contract, delict, statute or otherwise. Hence, I am in agreement with the respondent that the individual complainants, with full knowledge that they were entitled to the benefits as provided for in terms of the rules, waived all further claims not only against the local authority concerned but also against the pension fund in respect of any right or entitlement against the fund arising out of their termination of employment. And the fund, by its signature of the agreement, accepted the benefit in its favour.

30. Insofar as the complainants have made out a case that they reserved their rights when signing the addendum, I cannot see how they can do so and at the same time be bound by clause 6.1 of the settlement agreement. Especially given that clause 2.2 of the addendum consciously aimed at defining the specific amount of the employer's obligation in respect of both the enhancement in terms of rule 34(2) and the severance benefits. The addendum came about after the complainants disputed the amount payable by the employer. They cannot now accept an amount which the employer and the fund agreed to pay in full and final settlement of the dispute about the employer's liability, and at same time argue that the employer's liability goes beyond that amount. Nor can they make a quasi-delictual claim against the fund because it may have misstated figures at a point prior to a valid contractual settlement on consciously

agreed terms disposing of the dispute.

31. Accordingly, for the aforegoing reasons the complaint is dismissed.

Dated at **CAPE TOWN** this 1st day of February 2001.

_____

John Murphy
Pension Funds Adjudicator