

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/WE/448/99/LS

In the complaint between:

G Groenewald

Complainant

and

Sasko Retirement Fund

First Respondent

Sasko Provident Fund

Second 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 relating to the benefit which the complainant received on his resignation from the company. The complainant claims that he is entitled to a retrenchment benefit which, in terms of the fund's rules, is considerably greater than the resignation benefit he received.
2. No hearings were conducted and therefore I have relied on the documentary evidence and the investigation conducted by my investigator, Lisa Shrosbree.
3. The complainant was employed by Sasko (Pty) Ltd ("the company") on 1 October 1981 and simultaneously became a member of the Sasko Provident Fund ("the provident fund").
4. On 1 March 1994, the complainant transferred to the Sasko Retirement Fund ("the retirement fund"), a defined contribution fund.
5. In March 1996, on account of conflict which had arisen between the complainant and the general manager of the company, the complainant requested that he be transferred from the Pietersburg branch of the company.

6. A new position of group projects manager was accordingly created for the complainant at the company's head office in Paarl to which he transferred.
7. According to the company, shortly after the complainant was transferred to Paarl, it discovered that the complainant had traded recklessly whilst at the Pietersburg branch. The company accordingly demoted the complainant from group projects manager offering him the position of manager at the Bethlehem branch in the alternative.
8. However the complainant declined the offer and decided to resign from the company instead.
9. The effective date of the complainant's resignation was 1 August 1996. He received a withdrawal benefit of R104 139.03 consisting of his own contributions and interest from the retirement fund and R38 819.77 from the provident fund, that is, a total benefit of R142 958.80.
10. The complainant argues that the company should have informed him that by voluntarily resigning, the benefit he would receive from the fund would be extremely low.
11. The complainant asserts that the company failed to follow due process as laid down in the Labour Relations Act of 1995 and that had it done so, he would have been entitled to a retrenchment benefit.
12. The rules provide that a member shall receive his actuarial reserve value in the fund on retrenchment which in the complainant's case would have amounted to R847 461.00 which is significantly higher than the resignation benefit of R142 958.80 which he received.

13. The relief sought by the complainant therefore is the difference between the resignation benefit which he received and the retrenchment benefit which he claims he ought to have received, that is, the balance of R704 602.20.
14. It is not at all clear from the complaint on what basis the complainant claims to be entitled to the retrenchment benefit as opposed to the resignation benefit when he resigned voluntarily. It would appear that, at most, he may be entitled to interest on the amount which the fund erroneously omitted to pay him at the time of his resignation in August 1996. The outstanding balance was only paid to him in March 1999.
15. However I find it unnecessary to go into the merits of this dispute for the following reasons:
 - 15.1 The Sasko Retirement Fund was liquidated on 30 June 1998.
 - 15.2 My jurisdiction extends to the adjudication of complaints as defined in the Act.
 - 15.3 The Act defines a complaint as the complaint of a complainant relating to the administration of a *fund*, the investment of *its* funds or the interpretation and application of *its* rules.
 - 15.4 Since, in this instance, the fund is no longer in existence, there is no complaint as defined.
 - 15.5 Thus I do not have jurisdiction to investigate this matter.
 - 15.6 In so far as the complainant has a claim, he should have sought relief in terms of section 28 of the Act providing a claims and objections procedure in respect of a fund which is in the process of being liquidated.

16. The complaint is accordingly dismissed.

DATED at **CAPE TOWN** this **21st** day of **DECEMBER** 1999.

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JOHN MURPHY

PENSION FUNDS ADJUDICATOR