

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/166/98/SM

In the complaint between:

JOHN PETER BAM

Complainant

and

W.P.K. PENSION FUND

Respondent

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

Introduction:

This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A (3) of the Pension Funds Act of 1956.

The complainant is John Peter Bam, a pensioner formerly employed by Wm Spilhaus & Co, a subsidiary of W.P.K. Landbou Bpk. He was a member of the respondent from 1 August 1963 until his early retirement on 31 August 1998.

The respondent is the W.P.K. Pension Fund, which was a defined benefit fund up until 1 March 1998 when a defined contribution section was added to the fund. The principal officer of the fund is Mr Johan Liebenberg. The fund is administered and underwritten by Old Mutual.

In essence, the complainant alleges that, when ascertaining his transfer value (which in terms of the rules corresponded to actuarial reserve value) on moving (voluntarily) to the defined contribution section, he was furnished by the fund with an actuarial reserve value related to an annual pension calculated on an incorrect final salary. According to the complainant, when the correct salary was used and a higher annual pension determined, the actuarial reserve value did not rise correspondingly but remained the same. The complainant further alleges that the fund has avoided addressing his complaint.

This is a complaint then relating to the administration of the fund, alleging that the complainant has sustained prejudice in consequence of the maladministration of the fund by the fund.

No hearing was held in this matter and in determining the complaint I have relied on the documentary evidence and submissions and on the report placed before me by my senior investigator, Sue Myrdal.

Having completed my investigation I have determined the complaint as follows. These are my reasons.

The complaint

The complainant has made a great deal in his complaint of the fact that, for a period of approximately the earlier year and a half of the two years immediately before his retirement, there was an error in that less than the required 7.5% of his pensionable salary was deducted for contribution to the pension fund. He deduces that when the time came to calculate his actuarial reserve value for transfer to the defined contribution section, this was then done on a slightly lower salary than was correct (the pension formula being employed in terms of the rules utilising the salary over the last 24 months). He maintains that, on the basis of these erroneous salary figures, a pension amount of R54 162 would have been payable, but that, using the corrected final salary figures, a pension of R58 428

per annum would have been payable. The complainant appears to have worked these annual pension amounts out himself based on salary details he obtained from the fund and from his employer respectively. (As will be shown later, they do correspond almost exactly to the two different annual pension amounts calculated by Old Mutual.)

The complainant places considerable reliance on a letter dated 6 May 1998 from Mr Johan Liebenberg, general manager of human resources and the principal officer of the fund. This was Annexure H to his complaint and has subsequently conveniently been referred to as such by the parties. Annexure H reads as follows:

“Sover ek in u persoonlike leer kon naspoor het die Ou Mutual op 5 Maart 1998, u aktuariele reserwewaarde op R855 157 gekwoteer gegewe dat u diens na 1 Augustus 1963 terugdateer word. Die koste aan terugdatering beloop R14 084.

Ooreenkomstig 'n verdere skrywe deur die Ou Mutual gedateer 2 Februarie 1998, beloop u volle pensioen per jaar R54 249,74 - ook slegs 'n kwotasie.

Beide hierdie kwotasies is deur die Ou Mutual voorwaardelik verskaf. Ou Mutual verklaar hulself nie skadepligtig indien enige voorlopige syfers vir watter doeleindes ookal aangewend word nie en gee ook geen waarborge nie.”

The complainant maintains that this information was provided before the error in the salary figures was pointed out, and that the clear implication of the letter is that the actuarial reserve value of R855 157 relates to an annual pension of R54 249,74. The nub of his complaint, then, is that when the pension of R58 428 is the basis of the calculation, the actuarial reserve value should be higher. In fact, he initially posed his complaint to this office as a question, in that he asked that the correct actuarial reserve value be calculated for him.

The complainant in his complaint also makes the bald statement that the respondent “has avoided addressing the complaint.”

The response

Mr Liebenberg furnished a full response to this office, the relevant portions of which I set out below:

“Our understanding of the complainant's complaint is that due to an error in fund contributions and salaries provided to the pension fund, the actuarial reserve value credited to the complainant is less than it should be. It is also alleged that WPK Landbou Bpk avoided addressing the complaint.

Annexure B is a copy of an email received from Old Mutual [dated 26 May 1998] giving full details of the various calculations done by Old Mutual in respect of the complainant. Of specific importance is 6 where the actuarial reserve of R855 157,00 is stated. It is very clear that the information supplied by the complainant is incorrect. It was never stated that the value of R855 157,00 relates to a pension of R54 249,00 as stated in the complainant's letter of 2 March 1999 to Mr Liebenberg.

Annexure C is a copy of a letter sent to the complainant on 7 April 1999 that was not included in the documents forwarded to you by the complainant. This again clearly indicates the actuarial reserve values based on different pension annuity. It also contradicts the allegation that WPK Landbou Bpk has avoided addressing the complaint (please refer the last paragraph where the complainant is invited to arrange an appointment to clarify any further problems that he may have).

Annexure D is an extract from a letter from Old Mutual dated 30 March 1999 which shows that the Fund paid more than R8 000,00 for the different calculations done in respect of the complainant. This again totally contradicts the allegation by the complainant that WPK Landbou Bpk avoided addressing his complaints. The Fund has used its best endeavours to try and satisfy the complainant's complaints.

The complainant alleges that incorrect member contributions were paid to the Fund. We are of the opinion that this is not at all relevant because the complainant did not receive a refund of contributions on transfer but was credited with his correct actuarial reserve value...based on membership from 1 August 1963 and not the incorrect salaries as alleged by the complainant.”

The calculations from annexure B mentioned in this letter are summarised in annexure C, the letter sent to the complainant dated 7 April 1999. The relevant portions read as follows:

“Volgens ‘n dokument ontvang van die Ou Mutual verskaf hulle die volgende inligting:

	Volle Pensioen Per Jaar	
	soos op 1/3/1998	Aktuariele Waarde
(a) Met hoofraam gegewens -	R54 249,52	R828 377,00
(b) Met verhoogde salarisse -	R58 320,30	R841 358,00
(c) Volle pensioen (b) met terugwerkende diensjare na 1 Augustus 1963		R855 157,00

Die verbeterde voordeel is teen ‘n koste van meer as R70 000 aan u deurgegee.

Hierdie waardes is bereken deur die Aktuaris van die Fonds en is gebaseer op die besonderhede van toepassing op u soos op die genoemde datum. Die Trustees van die WPK Pensioenfonds aanvaar die berekenings soos die Aktuaris van die Ou Mutual gedoen en enige voordele word ooreenkomstig die berekeninge en voorwaardes soos deur die Ou Mutual bepaal asook die Fondsreels, aan u toegeken.”

It should be noted that it is not in dispute that there was an initial miscalculation, based on incorrect salary data. From the above letter it may be seen that Old Mutual performed the abovementioned calculations as at 1 March 1998, by which date they had received the correct salary information; they were able to show the comparative annual pension figures based on the original salary data retained on the computer mainframe, and on the corrected salary figures as supplied to them. As stated, these correspond almost exactly with the two different annual pension figures calculated by the complainant.

A further submission by Old Mutual’s Mr Chris Newell, actuary to the fund, explains in detail that the actuarial reserve value (ARV) is primarily a function of the retirement benefit, and that this is not, as the complainant appears to have thought, dependent in any way on the contributions paid to the fund. Having identified this aspect of the complaint as a side-

issue, he then attempts to explain the confusion regarding the calculation of the ARV:

“The original ARV calculation was done using a lower salary, and it was this original calculation that related to the pension of R54 249 per year. A revised ARV calculation was done using the correct salary. Thus, in conclusion, I support [Mr Liebenberg’s] comments ... which highlight that “it was never stated that the (ARV) value of R855 157 relates to a pension of R54 249.” Annexure B [*the email from Old Mutual regarding the calculations as at 1 March 1998*] should make it very clear that the ARV has been calculated correctly using the correct (higher) salary and service based on membership from 1 August 1963, and that it is this ARV that has resulted in the higher pension.”

The complainant was afforded an opportunity to respond to these submissions, and essentially reiterated that, in terms of Annexure H (the letter dated 6 May 1998),

“the document states clearly that a pension of R54 249,00 relates to an actuarial reserve (ARV) of R855 157,00 ...an ARV based on a pension of R58 320,00 must be greater than an ARV based on pension of R54 249,00. This forms the basis of the complaint.”

Mr Liebenberg subsequently sent my investigator a copy of a letter he received from Old Mutual’s Mr John Kotze, assistant to Chris Newell, written in response to the abovementioned response from the complainant. It reads:

“Mr Bam seems to be basing his case around Annexure H. Mr Bam feels that Annexure H “states clearly that a pension of R54 249 relates to an ARV of R855 157.”

In our previous correspondence, and in all other correspondence that you have supplied to Mr Bam and to the adjudicator’s office, it has been demonstrated that Annexure H does NOT in fact state what Mr Bam feels it does.

I felt that I should highlight the problem that Mr Bam has with Annexure H. (Mr Bam feels that the ARV quoted and the pension quoted in Annexure H were based on the same underlying assumptions.

In fact, and you say as much in the letter, the values came from two **separate** letters where the underlying assumptions were **different**.) This latter point might need to be made explicitly to the adjudicator, so as to highlight how Mr Bam’s misunderstanding has arisen. It should also serve to highlight the reasonable steps you have taken (at an ever increasing cost to the Fund) to resolve this matter, and I hope it will help to bring about a speedy resolution to this dispute in favour of the Fund.”

Analysis of the complaint

Since the complaint centres around the contentious “Annexure H”, the letter bears repeating here:

“Sover ek in u persoonlike leer kon naspoor het die Ou Mutual op 5 Maart 1998, u aktuariele reserwewaarde op R855 157 gekwoteer gegewe dat u diens na 1 Augustus 1963 terugdateer word. Die koste aan terugdatering beloop R14 084.

Ooreenkomstig ‘n verdere skrywe deur die Ou Mutual gedateer 2 Februarie 1998, beloop u volle pensioen per jaar R54 249,74 - ook slegs ‘n kwotasie.

Beide hierdie kwotasies is deur die Ou Mutual voorwaardelik verskaf. Ou Mutual verklaar hulself nie skadepligtig indien enige voorlopige syfers vir watter doeleindes ookal aangewend word nie en gee ook geen waarborge nie.”

I am in full agreement with Mr John Kotze’s assertion that this letter does *not* “state clearly that a pension of R54 249 relates to an ARV of R855 157”, although I can see how such a misunderstanding could have arisen.

The letter is not as clear as it could have been, but, reading between the lines it would appear that Mr Liebenberg, at the time of writing the letter, was not in possession of the complete picture subsequently furnished to him by the email dated 26 May 1998, that is the two different annual pension amounts (one based on incorrect salary data and the other based on the corrected salary data) as well as the three actuarial reserve value amounts (one each relating to the incorrect and correct salary data and one “bottom line” figure based on the years of service backdated to 1 August 1963). He appears only to have been in possession of the “bottom line” figure, furnished to him (according to the above letter) on 5 March 1998, namely the actuarial reserve value of R855 157.

Having mentioned this amount, Mr Liebenberg in the next paragraph writes:

“Ooreenkomstig ‘n verdere skrywe deur die Ou Mutual gedateer 2 Februarie 1998, beloop u volle pensioen per jaar R54 249,74 - ook slegs ‘n kwotasie.” Despite the slightly misleading use of the word “verdere” it is clear that he is referring to an amount quoted earlier in time, viz 2 February 1998, in a different document. It is also apparent in the light of subsequent information supplied, even if it is not immediately clear from the face of the letter, that this figure must have emanated from an outdated source, utilising the incorrect final salary figures. Mr Liebenberg was careful to state that this was “only a quotation” and that, in fact, both figures were provisional.

In fact the correct salary figures were employed when the calculations were performed as at 1 March 1998. These calculations showed that the actuarial reserve value correctly associated with a pension of R58 320,30 was R841 358,00. The actuarial reserve value of R855 157 actually relates to the pension based on the correct salary figures, backdated to allow for service to 1 August 1963.

Mr Kotze has therefore correctly pinpointed the source of the misunderstanding. This has been made clear to the complainant, but he has chosen to persist in his complaint. I find no grounds for him to do so.

The various submissions by Mr Liebenberg and the Old Mutual actuaries indicate to me that, far from failing to address the complaint, the respondent has given the complaint serious, prolonged and costly attention, both before and after submission of the complaint to this office.

I find therefore that there has been no maladministration by the fund and that the complainant has not been prejudiced.

Accordingly the complaint is dismissed.

DATED at CAPE TOWN on 3rd AUGUST 1999.

JOHN MURPHY

PENSION FUNDS ADJUDICATOR