

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/FS/125/99

In the complaint between:

W F Wormald

Complainant

and

Iscor Pension Fund

First respondent

Iscor Benefit Fund

Second respondent

INTERIM RULING IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF 1956

1. This is a complaint lodged with the Pension Funds Adjudicator relating to the disability benefit which the complainant received on his retirement. No hearings were conducted and therefore, in determining this matter, I have relied on the documentary evidence and the investigation conducted, under my supervision, by my investigator, Lisa Shrosbree.
2. The complainant was employed by Iscor Limited and accordingly a member of the Iscor Pension Fund.
3. All members of the Iscor Pension Fund automatically become members of the Iscor Benefit Fund pursuant to rule 3.1 of the latter's rules which reads:

All lede van die PENSIOENFONDS, met die uitsondering van uitgestelde pensioenarisse en persone wat die pensioene ingevolge reëls 6,7 en 8 van die reglement van die PENSIOENFONDS ontvang, wat nog nie die ouderdom 60 jaar bereik het nie, kwalifiseer vir lidmaatskap van die FONDS en word LEDE van die FONDS vanaf die datum waarop hulle lede van die PENSIOENFONDS word.

4. Therefore, in terms of rule 3.1, when the complainant joined the pension fund, he also became a member of the Iscor Benefit Fund.
5. On 7 May 1996, the complainant was retired by Iscor on the grounds of ill health. Both the pension fund and benefit fund provide for disability benefits.
6. Rule 6.3.1 governs disability benefits in the pension fund and reads:

Indien 'n LID wat nog nie die Normale Aftree-ouderdom bereik het nie, en wat nie 'n ongeskiktheidsinkomste vanaf die Bystandsfonds ontvang nie, as gevolg van siekte of besering wat nie deur sy eie toedoen meegebring is nie, na die uitsluitlike diskresie van Yskor Beperk permanent nie daartoe in staat is om sy pligte in die pos wat hy op daardie tydstip beklee doeltreffend te verrig nie, mits mediese bewyse met betrekking tot die aard en omvang van die Lid se siekte of besering tot bevrediging van Yskor Beperk voorgele kan word, sal die LID op 'n pensioen ingevolge reel 6.1 geregtig word ten opsigte van sy Aftreedens tot op die werklike datum van sy aftrede.

Die bepalings van hierdie reel 6.3.1 sal ook van toepassing wees op 'n LID wat 'n ongeskiktheidsinkomste vanaf die Bystandsfonds ontvang, indien sodanige Lid verkies om die voordeel ingevolge hierdie reel te ontvang en dat die betaling van sy ongeskiktheidsinkomste onder die Bystandsfonds as gevolg daarvan gestaak word.

7. Thus in terms of the rules of the pension fund, a member who becomes permanently incapable of continuing in his current occupation due to sickness or injury is entitled to a disability benefit equal to the pension benefit calculated in terms of rule 6.1, provided he is not receiving a disability benefit from the benefit fund.
8. Rule 5.1 governs disability benefit in the benefit fund and reads:

'n LID wat vir 'n tydperk van drie ononderbroke maande as gevolg van siekte of besering nie daartoe in staat is om sy eie beroep of enige ander beroep waarvoor

hy redelikerwyse met inagneming van sy opvoeding, opleiding, ondervinding, status en vermoë te verrig nie, word, mits mediese bewyse met betrekking tot die aard en omvang van die LID se siekte of besering tot bevrediging van die RAAD VAN TRUSTEES voorgele word, geregtig op 'n maandelikse ongeskiktheidsinkomste gelyk aan 75% van een-twaalfe van sy FINALE GEMIDDELDE VERDIENSTE tot 'n maksimum maandelikse ongeskiktheidsinkomste soos van tyd tot tyd deur die RAAD VAN TRUSTEES bepaal. Sodanige ongeskiktheidsinkomste word, waar toepaslik, verminder met 'n bedrag gelyk aan 'n persentasie van die LID se maandelikse PENSIOENGEWENDE VERDIENSTE, waar sodanige persentasie gelyk is aan die persentasie wat toegepas word om die LID se bydraes tot die PENSIOENFONDS te bereken asook enige ander bedrag wat Yskor Beperk ooreenkomstig die bepalings van hierdie reglement mag bepaal. Die FONDS betaal maandeliks aan die PENSIOENFONDS 'n bedrag gelyk aan 10% van die LID se maandelikse PENSIOENGEWENDE VERDIENSTE, welke persentasie die DEELNEMER se bydraes tot die PENSIOENFONDS verteenwoordig.

9. Thus in terms of the rules of the benefit fund, a member who due to sickness or injury becomes incapable of performing his own occupation or any other occupation which he could reasonably carry out in view of his training and experience, is entitled to a disability benefit equal to 75% of one twelfth of his final average salary up to a maximum monthly pension as determined by the trustees from time to time.
10. Members thus have a choice to receive the disability benefit either in terms of the pension fund rules or the benefit fund rules.
11. On termination of employment, the complainant received a disability pension form requiring him to choose between a commutation of R54 211 and a monthly pension of R792 (the disability benefit calculated in terms of the pension fund rules) or a monthly pension of R2 844 (the disability benefit calculated in terms of the benefit fund rules).
12. The complainant elected the benefit fund disability pension of R2 844.

13. However contrary to his election, the fund paid the complainant a disability benefit from the pension fund. An amount of R54 211 was deposited into his bank account on 5 July 1996 and he has been receiving a monthly pension of R792 from the pension fund since his retirement on 8 May 1996. This forms the basis of the complaint.
14. The complainant's request for relief is that the fund be ordered to pay him a disability pension from the benefit fund pursuant to his election.
15. However the fund argues that the complainant is not entitled to a disability pension from the benefit fund; that at a trustee meeting held on 21 November 1995, it was agreed that in all disability claims, the fund would act on the advice of a Medical Audit Panel (consisting of three medical practitioners) to determine whether a member qualified for a disability benefit in terms of the rules of the pension fund or the benefit fund. It was also decided to adopt a policy that a member had to be 60% disabled for functions in terms of his job description to qualify for the disability pension in terms of the benefit fund rules. The relevant part of the minutes reads:

Lede wat as gevolg van swak gesondheid uit die diens van die werkgewer tree, se gegewens dien voor die Sentrale Yskor Advieskomitee. Hierdie komitee evalueer die lid se toestand om te bepaal of hy/sy in terme van die reëls van die Bystandsfonds of Pensioenfonds vir voordele in een van die onderskeie Fondse kwalifiseer. Die volgende kriteria word as riglyn gebruik:

Yskor Bystandsfonds

Die lid moet ten minste 60% van sy/haar huidige take nie meer doeltreffende kan uitvoer. (Hierdie kriteria moet deur die Eskom Pensioenfonds toegepas en is uit die Amerikaanse mediese riglyne geneem)...

16. In the complainant's case, the Medical Audit Panel advised the fund that it did not consider the complainant to be 60% disabled and that he therefore only qualified for a disability benefit in terms of the pension fund rules.
17. When the complainant appealed this decision, the fund sought medical opinion from two independent orthopaedic surgeons, namely, Dr Grabe and Dr Marais. On the basis of their reports dated 28 August 1996 and 21 August 1996 respectively, the fund confirmed its previous decision that the complainant was not 60% disabled and thus did not qualify for a disability pension from the benefit fund.
18. The question for determination at the outset is whether the trustees were entitled to adopt a policy that a member must be 60% disabled to qualify for the disability pension from the benefit fund.
19. The criteria laid down in the rules are that a member must be disabled to the extent that he is unable to pursue his own occupation or any other occupation which he could reasonably perform taking into account his training, ability and experience.
20. There is no requirement in the rules that a member must be 60% disabled to perform his duties at work. In other words, this was a criterion upon which the trustees decided without reference to any authority in the rules. As stated in the minutes quoted above, the criterion was derived from an American source.
21. Therefore the trustees evaluated the complainant's claim using the incorrect criteria.

22. The appropriate relief is therefore to refer the matter back to the trustees to evaluate the complainant's claim afresh using the criteria set out in the rules.

23. The order of this tribunal is accordingly as follows:

2.3.1 The respondents are directed to consider the complainant's claim for a disability benefit in terms of rule 5.1 of the second respondent's rules afresh.

2.3.2 Should any further medical evidence be required, the costs incurred will be for the second respondent's account.

2.3.3 The second respondent is directed to make a decision and to provide a full account thereof within six weeks of this determination whereupon, I shall hand down a final determination.

DATED at CAPE TOWN this 2nd day of JULY 2001.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR