

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR**

**CASE NO: PFA/GA/285/98/SM**

**In the complaint between:**

**ANNAH MAEPA**

**Complainant**

**and**

**SANLAM RETIREMENT FUND (OFFICE STAFF)**

**Respondent**

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

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1. This is a complaint lodged with the Pension Funds Adjudicator on 30 June 1998 in terms of section 30A (3) of the Pension Funds Act of 1956 ("the Act"), concerning the complainant's dissatisfaction with the withdrawal benefit she received on her retrenchment. The complaint relates to the administration of the fund and/or the interpretation and application of the fund's rules, and essentially alleges maladministration and/or that a dispute of law has arisen between the fund and the complainant.
2. The complainant is Annah Maepa, who was employed by Sanlam as a cleaner/"tea lady" at its office entitled Workplace Facilities North from 11 April 1986 until her retrenchment as of 31 December 1996. Thereafter she was re-employed as a temporary employee in February 1997 by Sanlam at their New Business Broker Service in Pretoria, her reappointment being made permanent in June 1997. She was a member of the respondent until the date of her retrenchment, and again since June 1997 until the present.

3. The respondent is the Sanlam Retirement Fund (Office Staff), since 1997 a defined contribution fund, but at the time of the event giving rise to the complaint a defined benefit fund called the Sanlam Pension Fund (Office Staff). A response to the complaint and further submissions in response to my investigator's queries have been received on behalf of the fund from Sanlam's Ms Annemi Slabbert, Legal Researcher: Employee Benefits.
  
4. No hearing was held in this matter and in making this determination I have relied on the documentary evidence and submissions and on the investigation of the complaint by my senior investigator, Sue Myrdal, under my supervision.
  
5. The complainant received notice of her impending retrenchment by way of a letter dated 27 September 1996 from the senior manager of corporate facilities. The letter informed her that her retrenchment would be effective as from 31 December 1996. The options regarding her pension monies were set out as follows:

Aangesien u nie vir aftrede kwalifiseer nie het u die volgende opsies ten opsigte van u pensioen:

- u kan die bydraes plus rente in kontant neem, die bedrag beloop R9 439,45. Die eerste R1 800 is belastingvry en die oorblywende degeelte word belas volgens 'n koers wat deur die Ontvanger bepaal word;
  
- indien u die volle bedrag oordra na 'n goedgekeurde pensioenfonds (uitgesluit 'n bewaringsfonds) van 'n nuwe werkgewer, of na 'n annuïteitpolis dan beloop dit dubbel u opgelope bydraes.

6. This summarises the wording in part 7 of the rules in operation at the time, dealing with withdrawal benefits. Rule 32 is the applicable rule:

Indien 'n Lid se diens by die werkgewer beëindig word as gevolg van personeelvermindering en hy dan nie op aftreevoordele kragtens Deel 4 geregtig is nie, het hy die volgende opsies:

- (a) die lid se opgelope bydraes; of
- (b) slegs indien die lid sy voordeel oordra na 'n pensioenfonds (uitsluitend 'n fonds wat deur die Kommissaris van Binnelandse Inkomste as 'n bewaringsfonds erken word) of 'n uittredingsannuïteitsfonds wat vir die doeleindes hiervan deur die fonds goedgekeur is:
  - (i) dubbel die lid se opgelope bydraes...

“Opgelope bydraes” is defined as

“die bydraes wat die lid tot die fonds gemaak het, tesame met rente”

and “rente” is defined as

“jaarliks saamgestelde rente teen 'n koers soos van tyd tot tyd deur die fonds bepaal”.

7. In response to my investigator's request for a copy of the withdrawal form pertaining to the complainant's withdrawal, Ms Slabbert advised that the complainant had not signed the form in which she had to exercise her option, on the grounds that she apparently “was afraid of being victimised”, according to a note in her file, although Ms Slabbert could not provide any explanation of this. The complainant herself stated in response to my investigator's telephonic enquiry that she did not sign any papers relating to her retrenchment because her (mistaken) understanding was that her signature would signify a voluntary severance of her employment. No-one had explained to her what the consequences of not signing the withdrawal form might be.
8. On 31 December 1996, the complainant's last day at work, a cheque was issued in respect of the cash benefit from the pension fund. Ms Slabbert advises that it was an administrative practice to pay the cash value as a default where no option was

exercised; there is no rule governing this situation. The complainant informed my investigator that she did not take the cheque on that day as she was not satisfied with the amount.

9. A month later the complainant was “called back” by Sanlam and commenced work on 3 February 1997 at their New Business Broker Service premises in Pretoria.
10. According to the complainant she went back to her former workplace in April 1997 and collected the cheque as she was concerned that it would expire.
11. In June 1997 the complainant’s re-appointment was made permanent. In April 1998 she wrote to a Mr Vic van Vuuren at Sanlam regarding her withdrawal benefit:

I hereby make an earnest appeal to you to investigate the matter because during my retrenchment I received only my pension contribution and the company’s contribution was left behind. I would like to know what happened to the company’s contribution and that, as I am reappointed is it possible that the company’s contribution be put into my new retirement fund.”

12. She received a brief reply from a Melinda Hayes of personnel administration reiterating the two options she had had at termination of service and stating

“You chose the first option, therefore no further benefits are available to be transferred to the retirement fund.”

Ms Hayes clearly had no knowledge of the fact that in fact the complainant had not chosen the first option, or any option at all.

13. The complainant thereafter referred this correspondence with her complaint to my office, encapsulating, in the following words, the dilemma of the retrenched employee who may well wish to preserve his/her retirement funding on retrenchment but who faces a period of no income:

"I find it very strange and unfair for the company to say that for me to get the company's contribution, I was supposed to transfer my benefits to a Pension Fund of a new employer or Retirement Annuity. How can that happen because when retrenched, it is impossible for one to get a new job in a very near future for the benefits to be transferred. Lastly money is needed to pay up debts, that is the fact that made it impossible to transfer the benefits to a Retirement Annuity."

14. Fortunately the complainant was not out of work for as long as she might have anticipated at the time of her retrenchment. However, in effect in this case the complainant, having worked for the employer for the past fourteen years, with an involuntary break of one month over her retrenchment in 1996, has lost at least half her retirement funding for the ten years up to the date of her retrenchment.
15. It is clear from the facts that the complainant would have preferred to preserve her retirement funding and receive the greater amount, but that she was struggling under time and financial pressures to find a way of doing this, and was essentially seeking to defer the moment of decision-making. She was also not a highly educated employee and lacked the knowledge and resources to assert herself in this situation.
16. In the absence of any rule in the fund's rules regarding the period within which an option in terms of rule 32 must be exercised, or any rule stipulating a default option to be applied should a member fail to elect an option, and in the absence furthermore of any stipulated period mentioned for exercising an option regarding her pension fund withdrawal benefit in the letter advising the complainant of her retrenchment, the period for exercising the option and the consequences of non-election must be reasonable in the circumstances.
17. In my view it is not reasonable that, on the complainant's termination date, the fund effectively elected the cash benefit, being in value half the amount of the preservation option, on her behalf three months after advising her of the options she would have on the termination of her service, without further reference to her, which

reference could have included a discussion of whether she wished the fund to hold the benefit for a mutually agreed reasonable further period while she sought alternative employment, or discussion of the feasibility of contributing to a retirement annuity.

18. In the circumstances I find that the complainant was not given a reasonable opportunity to exercise her options, and that such a failure to afford her a reasonable opportunity constitutes maladministration, necessitating the remedy that the complainant be placed in the position in which she would have been placed had the maladministration not taken place. In other words she must be given a further chance to exercise her election.
19. According to the response to the complaint from Ms Slabbert the objective of rule 32 is to encourage a member to preserve his/her withdrawal benefit, by transferring it to another fund, rather than to take it in cash. To give effect to this valid objective a higher benefit is only available if a member preserves the entire withdrawal benefit. Should the complainant in this case therefore, on being afforded a further opportunity to exercise her election, choose the transfer/preservation benefit, she will have to restore the cash portion which she has already received.
20. Accordingly the order of this tribunal is as follows:
  - 20.1 The respondent is directed within seven days of this determination to formulate and make a written offer to the complainant that, on repayment to the fund of the cash amount of her withdrawal benefit, an amount of twice her own contributions as at the date of her retrenchment on 31 December 1996 shall be credited to her account in the Sanlam Retirement Fund (Office Staff) or paid to a retirement annuity fund.
  - 20.2 The complainant shall signify her acceptance of the above-mentioned offer in writing within one month of date thereof, indicating her election for payment of either the fund or a specified retirement annuity, failing which she shall be deemed to have

refused the offer.

DATED at CAPE TOWN this 6<sup>th</sup> day of MARCH 2001.

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**JOHN MURPHY**  
**PENSION FUNDS ADJUDICATOR**