

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/895/2001/NJ

In the complaint between:

SEL Sekul

Complainant

and

Seventh-Day Adventist Church Pension Fund

Respondent

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

1. This is a complaint lodged with the Office of the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act 24 of 1956 (“**the Act**”). The complaint relates to the payment of a retrenchment benefit, in particular, the computation thereof and the meaning to be accorded to the terms “pensionable service” and “years of service”.
2. No hearing was held. An investigation under my supervision was conducted by my assistant, Mr Naleen Jeram. In handing down this ruling, I have relied exclusively on the documentary evidence and submissions gathered during the course of our investigation. For reasons, which appear below, I have chosen to hand down an interim ruling.
3. The complainant is S E L Sekul, an adult female, currently residing at Heidelberg, Gauteng. The complainant is unrepresented in this matter.

4. The respondent is the Seventh-Day Adventist Pension Fund, a pension fund falling within the ambit of pension fund organization as defined in section 1 of the Act. The fund is represented by Mr N H Barnaschonè of Honey and Partners Inc attorneys.

5. In 1989 the complainant became a member of the fund. In terms of her employment contract, she was required to work 5 hours a day and received two-thirds of a full salary scale. On 31 May 2001 the complainant was retrenched by the employer and became entitled to a withdrawal benefit from the fund. The relevant rule regulating the retrenchment benefit is rule 7.2, which reads:

7.2(1) If a Member, who has completed at least 3 years service with the Employer is terminated before the Normal Retirement Date (whether voluntarily by the Member or as a result of retrenchment, redundancy, dismissal or any other reason), and he/she is then not entitled to retirement benefits from the Fund the cash benefit is transferred for him/her to another fund which has been established for the payment of annuities or retirement benefits and which has been approved by the Fund for this purpose.

Cash benefit is defined as in rule 7.1 as follows:

An amount equal to:-

In regard to a Member who has been completed at least 3 years Membership, K% of the Member's latest annual pensionable Remuneration multiplied by the number of completed years in his/her term (*sic*) of Pensionable Service, where k is determined according to the following scale:

Number of Complete years of Pensionable Service	k%
3 years and more but less than 10	4
10 years and more but less than 15	6
15 years and more	8

Pensionable service in turn is defined in rule 2 as:

Pensionable Service in regard to any Member means the last or only period during which the Member was a Member of the Fund for the accumulation of retirement benefits without interruption, together with any other period during which the Member worked for the Employer or elsewhere and which the Employer was recognized as Pensionable Service and for which the Employer agreed to contribute to the Fund, provided that a Member's term of Pensionable Service is subject to a maximum period of 40 years.

Remuneration is also defined in rule 2 as follows:

In regard to any Member means the Salary Factor multiplied by the relevant percentage applicable to the Member...

6. The fund computed the benefit as follows:

Last Pensionable Salary	R 2,392.00
X12	R28,704.00
X4%	R 1,148.16
X7.78 years of full time service	<u>R 8,932.69</u>

In terms of the fund's calculations, the complainant was entitled to a withdrawal benefit of R8,932.69 (less tax).

7. The complainant was dissatisfied with the computation of her benefit, in particular, the values accorded to her pensionable service and completed years of pensionable service. She argued that during her period of employment no information was given to her either verbally or in writing that she would be penalized for being a part-time employee when it came to the computation of her pension benefit. Furthermore, she referred to a pension fund rule booklet, wherein (in the opinion of the complainant)

there was no indication that a person working a five-hour day instead of an eight-hour day would be penalized by a reduction in their pensionable service. As will appear below in the determination, it is unnecessary to examine the contents of the rule booklet.

8. The complainant contended that her benefit should have been calculated on the following basis:

Last Pensionable Salary	R 2,393.00
X 12 Months	R28,704.00
X 6 %	R 1,722,24
X 11.7 Years Service	<u>R20,150.21</u>

Therefore, she seeks an order directing the fund to pay her R20,150.21.

9. Mr Barnaschonè acting on behalf of the fund conceded that even though the complainant was a part-time permanent employee, nevertheless, she was a member of the fund. However, he responded to the merits of the complainant's arguments as follows:

The complainant is dissatisfied because her cash benefit was calculated with the k-value as 4, and in her view ought to be 6, since she was employed for more than 10 years. However, the complainant did not work a full 8 – hour day like other employees, and to grant her the same amount of service years than a full-time employee, would not be fair and reasonable to the full-time employees. Hence the conversion of the complainant's years of pensionable service using the k-value as 4.

Furthermore, we have been informed by Miss Ten Cate of the fund that the contributions in regard of each member are calculated on a full-time rate.

10. In terms of section 13 of the Act, the rules of a fund are binding on the fund, the members, shareholders and officers thereof and any person claiming under the rules. The payment of any benefit arising out of a pension fund is regulated by the rules of the fund.
11. In terms of rule 7.2(1), the complainant is entitled to a withdrawal benefit representing her last annual pensionable remuneration multiplied by the number of completed years of pensionable service, multiplied by a k-factor, where such a factor is computed with the reference to the number of years pensionable service. A dispute has arisen between the parties as regards to the k-factor and the number of completed years of service to be accorded to the complainant.
12. The k-factor is specifically defined in rule 7.1, in that where a member has completed more than three years but less than 10 years of pensionable service, the factor shall be 4%, where the member has completed 10 years but less than 15 years of pensionable service, the factor shall be 6% and finally, where the member has completed more than 15 years of pensionable service, the factor shall be 8%. Pensionable service, in turn is defined as the period during which the member was a member of the fund (without interruption) for the purposes of retirement or any other period, which the employer recognizes as pensionable service and agrees to contribute to the fund subject to a maximum period of 40 years. The complainant essentially contends that by virtue of completing 11 years and 7 months of service and corresponding membership of the fund, this should be the figure (11,7) defining completed years of service and consequently the k-factor should be 6%. The fund argues that the complainant did not work a full 8 hour day and therefore to grant her the same amount of service years as that of a full-time employee would be unfair and unreasonable.
13. On a proper interpretation of rule 7.2(1) read together with the definitions contained

therein, it is plainly evident that pensionable service refers to the years of membership of the fund. It is in no way related to the question of whether a member is employed on a part-time or full-time basis. The rule does not allow for such a construction or interpretation, nor is there any other rule restricting pensionable service to the number of hours of service completed by a member. Furthermore, taking the fund's argument to its logical conclusion would mean that where a full-time employee works more than 8 hours a day, that is, the total number of hours in excess of the daily eight hour requirement, could result in his/her pensionable service exceeding the number of years of service actually rendered by the member and also in excess of the period of membership of the fund from an actual time point of view. Such an anomaly could not have been intended by the rule drafters.

14. Therefore, I am satisfied that the complainant's pensionable service amounted 11 years and 7 months and therefore she was entitled to a k-factor of 6% being applied in the computation of her withdrawal benefit.
15. However, for the purposes of calculating the withdrawal benefit, while there is no doubt that the k-factor should have been 6%, the number of completed years of service should not be 11.7 as the number of months in a calendar year are 12. Therefore, it should be 11 and 7 divided by 12, which in total amounts to 11,583. Accordingly, the benefit should have been calculated as follows:

Pensionable Salary	R28,704.00
X 6%	R 1,722.24
X 11,583 years of service	<u>R19,948.71</u>

16. However, in view of the fact that no hearing was held in this matter and the fund not properly addressing the merits with specific reference to the early withdrawal benefit rule, it would be prudent to issue a rule *nisi* and allow the fund a further opportunity,

should it so wish to submit arguments on the merits.

17. Accordingly, a rule *nisi* is hereby issued, in terms of which, the parties are called upon to show cause, if any, before 20 August 2001 why the following order should not be granted:

The respondent is directed to pay the complainant R19,948.71, in terms of rule 7, within 6 weeks of the date of this determination.

DATED at Cape Town this 7th day of August 2001.

John Murphy

Pension Funds Adjudicator