

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/326/99/NJ

In the complaint between:

B Jacobs

Complainant

and

Metropolitan Life Pension Fund

First Respondent

Metropolitan Life (Pty) Ltd

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 in terms of section 30A(3) of the Pension Funds Act of 1956. The complaint relates to the payment of an early withdrawal benefit.
2. No hearing was held in this matter. A thorough investigation was conducted by my investigator, Naleen Jeram. Accordingly, in determining this matter I have relied exclusively on the documentary evidence and submissions gathered during the course of Mr Jeram's investigation.
3. The complainant is Bernard Jacobs, a former member and employee of the first and second respondent respectively.
4. The first respondent is Metropolitan Life Pension Fund, a pension fund duly registered under the Pension Funds Act of 1956 (hereinafter referred to as "the fund").

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The second respondent is Metropolitan Life (Pty) Ltd, a company duly incorporated with limited liability according to the company laws of the Republic of South Africa (hereinafter referred to as "the employer"). The fund and the employer are represented by Mr Gregory Beck, the group industrial relations manager of the employer.

5. During January 1988, the complainant commenced employment with the employer as an assurance representative. However, he only became a member of the fund in October 1988. During 1990 the complainant resigned from employment (there is a dispute amongst the parties in respect of the exact date of resignation, though nothing turns on it).
6. At the time of the complainant's resignation, he was entitled to an early withdrawal benefit of R2,329.93. The fund decided use the complainant's withdrawal benefit to set-off his debts owing to the employer in the amount of R2,558.01. This was as a result of a written undertaking given by the complainant, wherein the employer was authorised to use his withdrawal benefit to set-off any monies owing by the complainant to the employer. The agreement reads as follows:

Hiermee gee ek B Jacobs toestemming dat my pensioenkrediet in pand gehou word teenoor my skuld wat et by Metropolitan Lewens het.

Ek verklaar verder dat ek al my reg op die krediet oordra na die maatskappy sodat hy na gouddunke kan handel daarmee.

The agreement was dated 24 April 1990 and signed by the complainant and two witnesses.

7. Mr Beck, acting on behalf of the fund and the employer contended that prior to the signing of this undertaking, the complainant had experienced several financial

problems. As a result the employer first granted him a loan of R1,000.00 to settle his outstanding rent. Whilst paying off this loan, he was granted another loan of R350.00 to settle a bad debt. The two loans were then consolidated into one to be repayable over 12 months. Immediately prior to his resignation the employer granted the complainant another personal loan to the value of R1,200.00. At the time of his resignation, the debt owed by the complainant in respect of the personal loans amounted to R1,924.18. In addition, the complainant owed the employer R633.83 for medical aid loans advanced to him. Thus, Mr Beck concluded that a total amount of R2,558.01 was owed by the complainant. In terms of the agreement his early withdrawal benefit was set-off against his outstanding debt.

8. The complainant acknowledges the content of the agreement and his signature therein. However, he disputes the date of the agreement and alleges that there was no date on the agreement and the document was signed sometime in 1989. In this matter, not much hinges on this issue as will presently become apparent. The complainant acknowledges that the employer advanced him a medical aid loan and in respect of this loan, at the time of his withdrawal, R633.83 was owing to the employer. But he denies that the employer made any other loans to him. According to the complainant, the only debt owed by him to the employer was the medical aid loan of R633.83 which should be the only amount deducted from his withdrawal benefit.

9. The complainant's argument is further strengthened by section 37A of the Act. In terms of this section a pension benefit may not be reduced, transferred, ceded, hypothecated or attached under a judgement or any order of a court of law. Section 37A(2)(b) specifically provides that "...the set-off of any debt against a benefit shall for the purposes of sub-section (1) be construed as a reduction of the benefit". Hence, the fund may not set-off the pension benefit against any debt owed by the complainant to the employer (other than the exceptions provided in section 37A(3) which are not applicable in this matter).

10. Be that as it may, an important issue initially ignored by the parties is whether I have jurisdiction to determine this matter in that the complainant's complaint may have prescribed. My investigator requested both parties to submit further submissions on this issue. In his subsequent response, the complainant argued that after he resigned he telephonically contacted a certain Mr George Muller of the employer, who informed him that he had to wait a period of time before his pension would be paid. He subsequently contacted Mr Muller again, who then informed him that his debt owed to the employer exceeded his pension benefit. In terms of the written agreement between himself and the employer, the fund used his withdrawal benefit to settle the debt owed to the employer. Consequently, no further monies were due to him. Hereafter the complainant continued to make telephonic enquiries at the employer. However, he took no legal steps. His argument for taking no legal action is that he could not afford to instruct an attorney.

11. The issue of prescription is regulated by section 30I of the Pension Funds Act of 1956. Section 30I reads as follows:

Time limit for lodging of complaints.

- (1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

- (2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.

(3) The Adjudicator may on good cause shown or of his or her own motion

(a) either before or after expiry of any period prescribed by this Chapter, extend such period;

(b) condone non-compliance with any time limit prescribed by this

Chapter.

12. The act or omission to which this complaint relates (the withdrawal date of the complainant from the fund) occurred in 1990. The complainant was aware of this act and accordingly section 30I(2) does not apply. Accordingly, the three year period referred to in section 30I has long since expired.

13. Section 30I serves a very important purpose in that it ensures finality of pension fund disputes. No legal system or any other system for that matter can function effectively without prescribing a time limit within which complaints must be adjudicated and resolved. Allowing complainants to lodge or re-activate a complaint which occurred several years ago places an unfair burden on pension funds. Whilst there are exceptional circumstances where a complainant cannot comply with the time limits, the legislature has provided for condonation of non-compliance in section 30I(3). However, this power should be exercised in exceptional circumstances rather than being the general principle. Otherwise, the purpose and importance of section 30I will be defeated.

14. In this matter, after the complainant was informed that he would be receiving no withdrawal benefit from the fund, he took no steps to interrupt prescription. Telephonic enquiries at the employer or the fund do not interrupt prescription. Normally, in terms of the Prescription Act of 1969, judicial interruption of prescription is effected by service of a debtor of any process whereby the creditor

claims payment of the debt (Section 15(1)). At least a summons claiming the debt should be issued. I cannot accept the complainant's argument that no legal steps were taken due to him not being able to afford an attorney. If this indeed was the case then the complainant should have approached either the Legal Aid Board or a Legal Aid Clinic or any other advice office to assist him.

15. Despite the fund providing me with three separate loan agreements verifying the loans and containing the complainant's signature the complainant is adamant that no loans were made to him by the employer. The evidence in its totality suggests that the monies were advanced to the complainant in terms of the respective loan agreements. If the complainant felt so strongly that no loans were advanced to him one would reasonably expect him to have taken legal steps to recover the benefit. Notwithstanding the complainant having a valid cause of action (in light of section 37A), his failure to take any legal steps is a material consideration in this matter.
16. In summary, in light of the complainant not taking any legal steps to interrupt prescription, I am of the view that no good cause exists to either extend the period or condone non-compliance with the time limits contained in section 30(3).
17. For the foregoing reasons, the complaint is dismissed.

Dated at **CAPE TOWN** this 23rd day of November 1999.

John Murphy

Pension Funds Adjudicator