IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO. PFA/WE/213/98/NJ

In the complaint between

ALBERT LANGFORD
Complainant

and

MOTOR INDUSTRY PENSION FUND
Respondent

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

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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 Albert Langford, an adult male of Cape Town.

The respondent is Motor Industry Pension Fund, a pension fund duly registered in terms of the Pension Funds Act of 1956.

After an exchange of a series of correspondence between the parties, the complainant lodged a written complaint with the Pension Funds Adjudicator on 13 September 1998. It is common cause between the parties that the complainant has complied with the provisions of section 30A(1) of the Pension Funds Act of 1956, requiring him to first lodge a complaint with the pension fund before lodging the complaint with the Pension Fund Adjudicator.
No hearing has been held in this matter. Accordingly, in determining this matter, I have relied exclusively on the documentary evidence and the argument put to me in writing and a Report compiled by my investigator, Mr N Jeram.

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

**The issue**

The complainant alleges that he has not received his full withdrawal benefits to which he is entitled in terms of the rules of the respondent and seeks an order compelling the respondent to make payment to him of all outstanding amounts due to him.

**Background to the complaint**

The complainant was employed by a series of motor car dealers from 18 August 1955 to 29 October 1981. For the duration of this entire period he was a contributing member for the respondent. The complainant alleges that when he was retrenched on 29 October 1981 his full pension benefits were not paid out to him. He contends that his benefit should have been paid to him in terms of rule 6 (6)(b) which reads:

(b) If a member who has contributed for at least 26 weeks, for reasons beyond his control is retrenched and is unable to find employment in the Motor Industry, such member may in his discretion make application:

(i) for the return of his contributions which have been applied to purchase B benefits increased by one-thirtieth of the total for each complete year’s contributions received at the date of withdrawal from the Fund; or

(ii) to receive a deferred pension, purchased by his total B and C contributions, when reaching the age of 55 years, in which event he shall continue to be entitled to all the benefits set out in this Clause, with the exception of the Benefit referred to in sub-clause (7)(a)(i).
The respondent argues that the complainant voluntarily resigned from his employment as of 29 October 1981 and all benefits due to him, in terms of then prevailing rules of the fund, were fully paid out to him on the 24 February 1982. The respondent, in a letter dated 4 September 1998 addressed to the complainant argues that the relevant rules applicable as at 29 October 1981 was rule 6(8) which reads:

In the event of a member leaving the Motor Industry and thereby ceasing to be a member or ceasing to qualify for membership for any other reason, he shall receive after the expiry of 12 months, or such lesser period as the Trustees may, in their discretion, determine:-

(c) if he has contributed for 5 years or less, the return of his total contributions applied to purchase B benefits; or

(d) if he has contributed for more than 5 years, the return of his total contributions applied to purchase B benefits increased by one-fiftieth of the total for each complete year’s contributions received.

The respondent further gave a breakdown of the amount of R3,134.01 which was paid to the complainant on 24 February 1982. The amount was made up as follows:

<table>
<thead>
<tr>
<th>A</th>
<th>“B”</th>
<th>Refund, re his own contributions as follows</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>619</td>
<td>weeks at 0.65 cents per week .................. R 402.35</td>
</tr>
<tr>
<td></td>
<td>361</td>
<td>weeks at 0.90 cents per week .................. R 324.90</td>
</tr>
<tr>
<td></td>
<td>154</td>
<td>weeks at 2.90 cents per week .................. R 446.60</td>
</tr>
<tr>
<td></td>
<td>53</td>
<td>weeks at 3.40 cents per week .................. R 180.20</td>
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<tr>
<td></td>
<td>108</td>
<td>weeks at 3.65 cents per week .................. R 394.20</td>
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<tr>
<td></td>
<td>64</td>
<td>weeks at 4.90 cents per week .................. R 313.60</td>
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<tr>
<td></td>
<td></td>
<td>Interest ........................................ R1,072.00</td>
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<tr>
<td></td>
<td></td>
<td>Total “B” Refund ................................ R3,134.01</td>
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</tbody>
</table>

Analysis of evidence and argument

The determination of this matter depends on a proper interpretation of section 30I of the
Pension Funds Act of 1956. Section 30I reads as follows:

(c) 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.

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

(g) The Adjudicator may on good cause shown or of his or her own motion:-

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

(ii) condone non-compliance with any time limit prescribed by this chapter.

The act or omission to which this complaint relates (i.e the alleged failure by the respondent to pay the complainant his full withdrawal benefit in terms of rule 6(6)(b)) occurred on 29 October 1981. Thus, the three year prescription period referred to in section 30I commenced at the aforesaid date unless I find that the complainant falls under section 30I (2).

The complainant was fully aware of the respondent’s alleged failure to pay him his full retrenchment benefits as at 29 October 1981. Hence, there is no room for the application of section 30I(2) in this matter.

Accordingly, I am satisfied that the three year period referred to in section 30I has long since expired.

The next question to be answered is whether I should extend the period or condone non-compliance with time limits in terms of the discretion granted to me in section 30I(3).
At the outset, I would like to express the importance and purpose of section 30I. In this regard I refer to the determination of *IJ van der Westhuizen v Sanlam Pension Fund (Field Staff)* (Case No. PFA/WE/7/98) at 6, where I stated:

“Section 30I aims at finality and certainty in the affairs of pension funds and aims at promoting efficiency by providing an incentive for the expeditious enforcement of complaints. All legal systems accept that the operation of obligations should be limited by requiring enforcement within a reasonable period of time. From a policy perspective, it is undesirable to allow complainants to reactivate complaints about occurrences which occurred a long time ago.”

In deciding whether to condone non compliance with the time limit, or to extend it, regard should be had *inter alia* to the length of the delay, the reasons for it and the complainant's prospects of success.

From the evidence it appears that the complainant only raised his complaint (in a letter dated 16 July 1987 addressed to the Finance Ministry) approximately 6 years after his benefits were paid to him.

The Finance Ministry’s reply in a letter dated 9 November 1987, addressed to the complainant, in essence stated that the Registrar of Pension Funds had investigated the matter and the withdrawal benefit as at 27 October 1980 was correctly computed to be R3,134.01 (three thousand one hundred and thirty four rand and one cent) and further in terms of the rules of the respondent this was the only amount due to the complainant.

The complainant hereafter expressed his dissatisfaction in a series of letters and telephone calls addressed to the respondent. The respondent in turn replied to the complainant, consistently maintaining its contention that the complainant received his benefits in terms of the rules of the fund applicable as at 29 October 1981.
Despite the extended correspondence, the complainant took no steps to interrupt prescription. Normally, in terms of the Prescription Act of 1969, judicial interruption of prescription is effected by service on the debtor of any process whereby the creditor claims payment of the debt (section 15(1)). Correspondence is usually not sufficient and at least a summons claiming the debt should be issued.

From the above it is clear that there is a dispute of fact as regards to whether the complainant was retrenched or voluntarily resigned as at 29 October 1981. Even if I were to exercise the power of condonation granted to me in terms of section 30I(3)(b) it is improbable that the complainant would succeed in his claim because he is unlikely to discharge the onus upon him to prove that he was retrenched and therefore entitled to the benefits in terms of the rules relating to retrenchment. On the evidence presented to me in this matter, the probabilities favour the respondent.

Therefore, in terms of section 30I of the Pension Funds Act of 1956 I am not permitted to investigate this complaint by virtue of the fact that the occurrence to which the complaint relates is deemed to have occurred more than three years before the date on which this complaint was lodged with my office. Due to the lapse of almost 18 years from the commencement of the complainant’s cause of action, the complainant’s limited prospects of success and his failure to issue summons against the respondent, it is my opinion that no good cause exists as contemplated by section 30(I)(3) to condone non compliance with the time limit set out in this section or extend the time periods.

Therefore, for the reasons set out above the complainant’s complaint is dismissed.

DATED at CAPE TOWN this 30TH DAY of MARCH 1999.

John Murphy
PENSION FUNDS ADJUDICATOR