IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/160/98/NJ

In the complaint between:

J M Steyn
Complainant

and

Motor Industry Pension Fund
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. This complaint concerns the payment of a spouse’s pension.

2. The complainant is Mrs J M Steyn, a 68 year old widow of Mr J H J Steyn, who during his life time was a member of the respondent.

3. The respondent is Motor Industry Pension Fund, a pension fund duly registered under the Pension Funds Act of 1956 (hereinafter referred to as "the fund"). The fund is represented by Mr J D S Helberg, the pensions officer.

4. Mr Steyn, commenced employment within the motor industry as a motor mechanic in 1947. However, he only became a member of the fund on 1 January 1953. On 18 August 1988 having attained the retirement age of 65 in terms of the rules of the fund, he elected to retire.
5. Upon retirement the rule applicable was rule 6 - the relevant clauses of, which read:

**Pension entitlement - (In force prior to the 1st September 1988)**

(1) Unless he is already in receipt of a pension in terms of sub-rule (5) of this Rule, every member shall, on the attainment of pension age, be entitled to a pension payable monthly, amounting to the sum of the member=s purchased B and C Benefits, described in sub-rule (2) of this Rule, in accordance with the rates of pensions prescribed by the company from time to time.

...Retirement commutation

(3) The company shall, at the member=s request when he applies for his pension, commute for a cash payment to the member, not more than one-third of any pension payable in terms of sub-rules (1) or (5) of this Rule, provided that if the pension payable does not exceed the amount set out in the Act, the entire pension may be commuted for a cash payment at the date of retirement. The amount of any cash payment effected in terms hereof shall be that computed by the actuary.

Monthly pension payments

(4) (a) The first pension payment shall be made on the last day of the month following that in which a member attains pension age or early pension age, and shall be paid monthly thereafter on the last day of each month during the lifetime of the pensioner.

Guaranteed period

(b) The last pension payment shall be made on the last day of the month in which a pensioner dies; provided that the pension shall be payable for ten years irrespective of his survival.

Death - unexpired portion of guaranteed period

(c) In the event of a pensioner=s death occurring within 10 years after the date upon which
6. In addition, the complainant had a choice of a reduced pension benefit set out in rule 6(6) as follows:

Reduced pension benefit

(6) Within 30 days of his retirement under either sub-rule (1) or (5) of this Rule, a member may elect to receive an actuarially reduced pension in order that on his death -

(a) a sum of R5,000.00; if he is an apprentice member; a sum of R2,4000.00; if he is a Grade 1 employee; or a sum of R17,000.00; if he is a journeyman member, shall be paid to his spouse, dependant/s or nominated beneficiaries (as determined solely in the discretion of the Company); or

(b) a pension shall be payable by the Fund to his widow during her lifetime.

7. A dispute of fact exists between the parties in relation to whether the fund advised the complainant of his benefit under rule 6(6). Mr Steyn died in 1995, 7 years after the date of retirement. Because the fund no longer keeps records on file and the officials who dealt with Mr Steyn at the time of his retirement no longer are in employment, my investigator has experienced difficulty in obtaining evidence to resolve this dispute.

8. In about July 1988, Mr Steyn enquired about his benefit through his union, Motor Industry employees' union of South Africa, who responded as follow in a letter to him dated 18 July 1988:

Ek verwys na u onlangse navraag in die bogenoemde verband en wens u mee te deel dat die Motornywerheid Pensioenfonds die volgende inligting verstrek het ten opsigte van voordele wat u kan verwag by normale aftree ouderdom.
Mr Helberg contends that the fund does not have a copy of any document received from the union requesting information from the fund. However, the benefits set out in the letter are correct.

9. On 19 August 1988, the Motor Industry Centre for Financial Administration (the then administrators of the fund) sent a letter to Mr Steyn stating:

The Pension Fund Administrators have indicated that you are entitled to:

1. A monthly amount of X (illegible in document)
   or
2.i A commutable amount of R 26 583.98
2.ii A reduced pension of R 460.52

Please advise us of your choice by return post.

Once again, no reference was made to the availability of the reduced pension benefit where provision is made for a spouse’s pension. Mr Steyn accepted the benefit under paragraph 2.

10. The complainant argues that when Mr Steyn accepted the benefit under paragraph 2, he did so under the impression that he was accepting the reduced pension in terms of rule 6(6) whereby she would be guaranteed a pension for the rest of her life after his death. My investigator telephonically enquired from the complainant how Mr Steyn knew about this benefit as it was not mentioned by the fund or its administrator. The complainant, in turn referred me to brochures given to Mr Steyn
in 1976 and early 1985 wherein the fund mentioned the benefit under rule 6(6) guaranteeing a spouse=s pension for life.

11. The complainant therefore contends that as at August 1988, she and Mr Steyn were under the impression that the benefit was computed in terms of rule 6(6) which included a spouse=s pension for life. Whereas, the fund asserts that the benefit was computed in terms of rule 6(1) and 6(4) without the provision for a spouse=s pension.

12. With regard to the important question as to whether the fund informed Mr Steyn of all his benefits, Mr Helberg states that the fund does not have any indication whether Mr Steyn either directly or through the administrator requested full particulars on the two major options available to him, that is, a pension benefit guaranteed for 10 years after his death or pension benefit including a benefit for his widow for the rest of her life. Further there is no indication that Mr Steyn did not know the difference between these two main options. It seems that the information requested and supplied does not deal with the spouse=s pension and deals only with the option to take the full pension or to commute one-third and to receive the balance as a pension. The fund, from time to time, had issued an information brochure to its members. These brochures explain the rules of the fund. However, the fund does not have copies of these brochures after such a length of time.

13. Mr Steyn died on 13 June 1995. On 5 July 1995, the fund addressed the following letter to the complainant wherein her benefits were set out as follows:

The amount of R2 035.32 made up as follows; was deposited in your United Bank transmission account number 125035639.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Widow’s Death Benefit</td>
<td>R1 125.00</td>
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<tr>
<td>Monthly pension for July 1995</td>
<td>R 910.32</td>
</tr>
<tr>
<td>Total</td>
<td>R2 035.32</td>
</tr>
</tbody>
</table>
The monthly pension of R910.32 (including annual increases) is payable to you until August 1998. Please note that the mentioned amounts do not form part of the Estate.

The widow’s death benefit of R1 125.00 was in terms of rule 6(8)(d) whereby any pensioner who was a journeyman, then his widow would receive this amount.

The fund continued to pay the complainant a pension in terms of the then applicable rule 6(4)(b) which guarantees payment for 10 years.

14. Hereafter, there was an exchange of correspondence between the parties relating to the question of payment of the pension to the complainant and for how long. Eventually, after August 1998 the fund stopped payment of monthly pension to the complainant as the 10 year guarantee period had lapsed.

15. The benefits received by Mr Steyn and the complainant were as follows:

Calculations and Benefits Received

1. Mr Steyn

<table>
<thead>
<tr>
<th>Period</th>
<th>Increase</th>
<th>Amount</th>
<th>Total</th>
<th>Notes</th>
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<tr>
<td>From</td>
<td>To</td>
<td>%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1988-09-21</td>
<td></td>
<td></td>
<td>26583.98</td>
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<td>770.85</td>
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<tr>
<td>Period</td>
<td>Increase</td>
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<td>Notes</td>
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<td>-------------</td>
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</tr>
<tr>
<td>1994-12-01</td>
<td>8.5</td>
<td>910.32</td>
<td>5461.92</td>
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<td>TOTAL</td>
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2. Mrs Steyn

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<th>From</th>
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<td>1162.74</td>
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<td></td>
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<td>40638.78</td>
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16. The complainant seeks an order directing the fund to pay a spouse=s pension for the remainder of her life. The fund maintains in terms of the rules of the fund, this is not possible.

17. As I have held in several determinations, the failure by a pension fund to provide relevant material information required by a member to make an informed choice clearly constitutes the breach of its duty to act in good faith and with due care and diligence. Has the fund breached this duty?

18. There is no doubt the fund was under a duty to inform Mr Steyn of his right to a reduced pension in terms of rules 6(6), which guaranteed a spouse=s pension for life. From, the limited correspondence still available at the time of Mr Steyn=s retirement, it appears that the fund made no mention of the benefit under rule 6(6). However, from the evidence, I am unable to conclude (on a balance of probabilities) that the fund failed in its duty for the reasons hereinafter set out.
19. Prior to his retirement, the complainant was involved in negotiations with officials of the fund and its administrator. Due to the officials no longer being employed and no record being kept of these negotiations it is uncertain whether the complainant was informed of his benefit under rule 6(6). Had Mr Steyn elected to receive this benefit, his one-third commutation lump sum plus monthly pension would have been reduced and it seems reasonable to assume that he probably preferred to accept the unreduced benefit. Thus, due to the death of the complainant, the lapsing of 11 years from the date of retirement and limited documentary evidence I am unable to find conclusively that the fund breached any of its duties owed to Mr Steyn and (indirectly) the complainant.

20. However, during my investigation, it has come to light that the rules of the fund were amended in 1988, wherein a spouse=s pension for life was introduced. Rule 6(6)(a) was inserted, which reads:

Pension to surviving spouse

(6)(a) If a pensioner dies leaving a spouse, the spouse shall be entitled to receive a pension payable until such a spouse=s death equal to one-half of the pension which the pensioner was receiving at the time of death, if no part of such a pension was commuted in terms of sub-rule (3) hereof; or, if part of such a pension was so commuted, the spouse shall be entitled to receive a pension equal to one-half of the pension which the pensioner would have been receiving at the time of death had the pensioner not commuted part of the pension in terms of sub-rule (3) hereof.

The spouse=s pension shall commence at the end of the month following that in which the pensioner died.

Pensioner is defined as “a member who has retired under sub-rule 2 or 5 of rule 6 or in terms of sub-rule 1, 5, 6 or 7 of the annexure 2 to these rules and who is in receipt of a pension. Since the complainant retired in terms of sub-rule 1 of annexure 2 (normal retirement) and he was in receipt of a pension as at his death in 1995, rule 6(6)(a) *prima facie* applied to Mr Steyn, in terms of which, his spouse
(complainant) is entitled to a pension for life.

21. At this point, my investigator specifically requested Mr Helberg of the fund to address me on the merits of the complainant=s entitlement in terms of rule 6(6)(a). In his subsequent response, he contended that as at 1 September 1988, the contribution rate of members were adjusted. All members who retired prior to this date were not affected by the amendments. The rule applicable to these members (including Mr Steyn) are set out in annexure 2 to the rules and a new benefit rule was introduced after 1 September 1988. The intention of the fund is that members who contributed to the fund in terms of annexure 2 would receive the benefits defined in annexure 2. Although not expressly stated the suggestion appears to be that even though Mr Steyn fell within the definition of pensioner, this was not the intention of the fund. Therefore, he cannot qualify for benefits other than those in annexure 2.

22. On a proper interpretation of rule 6(6)(a) it is more than clear that a spouse is entitled to a pension A...payable until such a spouse=s death...@. Although, this rule was not in force at the time of the complainant=s retirement, this is of no material consequence. The rule can only be invoked on the death date of a pensioner and this was the material date. Upon the death of Mr Steyn, he was a pensioner as defined in the rules and accordingly, since the complainant was his spouse she is entitled to this benefit. The intention of the rule-maker is plainly expressed in the clear and unambiguous language of the rule.

23. Whilst the above scenario on the face of it appears to give the complainant a double benefit, a close inspection of the rules shows otherwise. The parties in these proceedings are labouring under the false premise that the monthly pension received by the complainant after Mr Steyn=s death constitutes a spouse=s pension. This was not a spouse=s pension but rather a pension payable to Mrs Steyn which was guaranteed for 10 years. It is a death benefit. In terms of rule 6(4)(c) (quoted above) in the event of the death of the member within the 10 year
period, the benefit shall continue to be paid to a dependant determined by the employer which is subject to section 37C of the Pension Funds Act of 1956. Thus, the spouse, per se, does not have a right to this monthly payment. In terms of section 37C of the Act the board of the fund has to determine the dependants of the deceased and make an equitable distribution amongst them. The fact that the fund decided to award this monthly pension to the complainant and she is a spouse does not make this distribution a spouse=s pension. Thus, I find the rules of the fund do not in fact provide for a double benefit for a spouse.

24. Accordingly, I make the following order:

24.1 The complainant is entitled to a spouse=s pension for the remainder of her life in terms of rule 6(6)(a).

24.2 The fund is ordered to pay the complainant=s capitalised value of the monthly pension due from the date of death of Mr Steyn to the date of payment, computed in accordance with rule 6(6)(a), within 6 weeks of the date of this determination.

24.3 After the fund makes payment in terms of paragraph 24.2, the fund shall commence payment of the monthly pension due to the complainant.

Dated at Cape Town this 12th day of October 1999.

John Murphy
Pension Funds Adjudicator