IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/675/99/CN

In the complaint between:

Moses Mohlamme Complainant

and

African Bank Pension Fund First Respondent

Metropolitan Life Limited Second Respondent

Old Mutual Life Assurance Company (SA) Limited Third Respondent

PRELIMINARY DETERMINATION IN TERMS OF SECTION 30J OF THE PENSION FUNDS ACT OF 1956

1. On the 10th August 2001, I issued an Interim Ruling in this matter, in terms of which I ordered the second respondent to furnish the following information to the complainant, by no later than Tuesday 28th August 2001:

1.1. A detailed breakdown of the complainant’s contributions, as well as his employer’s;
1.2. A verification of the surplus due to him, if any;
1.3. A verification of the interest rate on his pension, as well as the actual interest earned by the fund for the period of his membership.
2. The information was required by the complainant in order to verify the correctness of the computation of the retrenchment benefit that was paid to him by the fund during July 1999, pursuant to his being retrenched by African Bank during January 1998. The complainant is of the view that the growth rate of his retirement benefit, from the time it was quoted to him at the end of March 1998 to when it was paid out to him during July 1999, is unreasonably low. At the end of March 1998, the complainant had made a telephonic enquiry from Mr. Denzil Williams, who was employed by Metropolitan Life Limited, as to the amount of the retrenchment benefit that would be paid out to him by the fund. He was informed that it was an amount of R350 000-00. However, when he eventually received the benefit, some fifteen months later during July 1999, it amounted to R358 041-34.

3. At the stage when the interim ruling was made, Old Mutual Life Assurance Company (SA) Limited (“Old Mutual”) had not been joined as a party to the proceedings. However, as it has a sufficient interest in this complaint, I will order that it be joined as the third respondent in terms of Section 30G (d) of the Pension Funds Act. Old Mutual was the administrator of the fund up to July 1997, when the administration was taken over by Metropolitan Life Limited. Although it had not been made a party to the complaint, Old Mutual is aware of the complaint and has also filed a response to the Interim Ruling. The response was sent to Metropolitan Life Limited under cover of a letter dated 19 November 2001.

4. The background facts to this complaint have been fully dealt with in the interim ruling, and will thus not be repeated herein.

5. In response to the interim ruling, Metropolitan Life Limited’s Miss Bernice Mokgosi sent me a letter from Old Mutual Employee Benefits, dated 19 November 2001 which reads as follows:
Your fax dated 18 October 2001 and our various telephonic discussions in respect of the abovementioned member’s complaint in terms of Section 30A of the Pension Funds Act of 1956 refers.

Breakdown of member’s contribution:
Mr. Moses Mohlamme joined the African Bank Staff Pension and Life Assurance Plan- Code 51043 on 1 June 1978. His pensionable past service date was backdated to 1July 1976 with an amount of R270-76. This amount is included in his total contribution to the fund. The fund was registered as a defined benefit arrangement, and the employer’s contribution is not refundable to the member. Below please find a detailed breakdown of Mr. Moses Mohlamme’s contribution history to the fund:

<table>
<thead>
<tr>
<th>DUE DATE</th>
<th>CONTRIBUTION RATE p.a</th>
<th>SALARY PER ANNUM</th>
<th>CONTRIBUTION PER ANNUM</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/06/1978</td>
<td>5%</td>
<td>R 3 180-00</td>
<td>R0-00</td>
</tr>
<tr>
<td>01/03/1979</td>
<td>5%</td>
<td>R 3 480-00</td>
<td>R121-25</td>
</tr>
<tr>
<td>01/03/1980</td>
<td>5%</td>
<td>R 3 900-00</td>
<td>R186-50</td>
</tr>
<tr>
<td>01/03/1981</td>
<td>5%</td>
<td>R 5 340-00</td>
<td>R221-75</td>
</tr>
<tr>
<td>01/03/1982</td>
<td>5%</td>
<td>R 9 480-00</td>
<td>R323-50</td>
</tr>
<tr>
<td>01/03/1983</td>
<td>5%</td>
<td>R12 288-00</td>
<td>R525-75</td>
</tr>
<tr>
<td>01/03/1984</td>
<td>5%</td>
<td>R15 144-00</td>
<td>R692-20</td>
</tr>
<tr>
<td>01/03/1985</td>
<td>5%</td>
<td>R16 200-00</td>
<td>R798-10</td>
</tr>
<tr>
<td>01/03/1986</td>
<td>5%</td>
<td>R18 840-00</td>
<td>R888-75</td>
</tr>
<tr>
<td>01/03/1987</td>
<td>5%</td>
<td>R21 480-00</td>
<td>R1 024-00</td>
</tr>
<tr>
<td>01/03/1988</td>
<td>5%</td>
<td>R23 400-00</td>
<td>R1 114-00</td>
</tr>
<tr>
<td>01/03/1989</td>
<td>5%</td>
<td>R27 600-00</td>
<td>R1 238-10</td>
</tr>
<tr>
<td>01/03/1990</td>
<td>5%</td>
<td>R31 788-00</td>
<td>R1 467-25</td>
</tr>
<tr>
<td>01/03/1991</td>
<td>5%</td>
<td>R34 980-00</td>
<td>R1655-90</td>
</tr>
<tr>
<td>01/03/1992</td>
<td>5%</td>
<td>R42 420-00</td>
<td>R2 121-00</td>
</tr>
<tr>
<td>01/03/1993</td>
<td>5%</td>
<td>R48 380-00</td>
<td>R2 319-00</td>
</tr>
<tr>
<td>01/03/1994</td>
<td>5%</td>
<td>R53 196-00</td>
<td>R2 579-20</td>
</tr>
<tr>
<td>01/03/1995</td>
<td>5%</td>
<td>R71 100-00</td>
<td>R2 942-20</td>
</tr>
<tr>
<td>01/12/1996</td>
<td>5%</td>
<td>R74 652-00</td>
<td>R2 740-25</td>
</tr>
<tr>
<td>01/03/1996</td>
<td>5%</td>
<td>R74 652-00</td>
<td>R933-13</td>
</tr>
<tr>
<td>01/03/1997</td>
<td>5%</td>
<td>R79 878-00</td>
<td>R3 772-00</td>
</tr>
</tbody>
</table>
Total employee contribution: R29 117-97

Surplus due to Mr. Moses Mohlamme:
Old Mutual’s membership schedule sent to Metropolitan reflects the following information in respect of Mr. Mohlamme:

- Column 8 = total contributions to the fund as at 1/07/97 (R 29 117-97).
- Column 9 = withdrawal benefit as at 1/07/97 (R 34 733-47)
- Column 10 = actuarial reserve value as at 1/07/97 (R 182 101-00)
- Column 11 = share of surplus as at 1/07/97 (R 116 412-00)
- Column 12 = total transfer value as at 1/07/97 (R 298 513-00)
- Column 13 = final transfer value as at date of payment to Metropolitan 1/07/1998 (R 336 274-89).

Interest rate on his contribution
The interest rate as per the fund’s rules on withdrawal was 3% compound per annum as at date of termination with Old Mutual. Mr. Mohlamme’s withdrawal benefit in column 9 was based on this rate.

Interest earned by the fund
The fund was invested in an Old Mutual Guaranteed Fund policy, which is classified as a policy participating in the profits of Old Mutual. The interest rates declared annually during September/October each year. The interest amount less investment fees and retirement fund tax is then credited to the fund as at 30 June each year. The below table reflects the Guaranteed Fund bonus rates declared by Old Mutual since 1985. The rates from 1/06/1978 are not available at this stage as confirmed in our telephonic discussions.

<table>
<thead>
<tr>
<th>Year to June</th>
<th>Vested Bonus %</th>
<th>Non-vested bonus %</th>
<th>TOTAL %</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 June 1985</td>
<td>11.0</td>
<td>6.75</td>
<td>17.75</td>
</tr>
<tr>
<td>30 June 1986</td>
<td>10.75</td>
<td>8.25</td>
<td>19.0</td>
</tr>
<tr>
<td>30 June 1987</td>
<td>11.0</td>
<td>12.0</td>
<td>23.0</td>
</tr>
<tr>
<td>30 June 1988</td>
<td>11.0</td>
<td>7.0</td>
<td>18.0</td>
</tr>
<tr>
<td>30 June 1989</td>
<td>11.0</td>
<td>11.0</td>
<td>22.0</td>
</tr>
<tr>
<td>30 June 1990</td>
<td>11.0</td>
<td>11.0</td>
<td>22.0</td>
</tr>
</tbody>
</table>
6. The “Old Mutual’s membership schedule” referred to above was sent to this Tribunal as an annexure to Metropolitan’s response to the complaint, contained in a letter dated 15 May 2001. I have compared the figures set out therein with those contained in the present response, and they correspond in all respects.

7. On the termination of the complainant’s membership of the fund in January 1998, he became entitled to a withdrawal benefit in terms of Rule A 3.1, which reads as follows:

**Withdrawal benefit**

If a member terminates his/her service with the employer before the normal retirement age and such member is not entitled to any benefits under the fund, the withdrawal benefit set out in the Schedule shall be available to him/her subject to the restrictions on the application thereof set out in rule A 3.2. This rule applies mutatis mutandis to a member whose service is terminated by the employer.

8. The Schedule of Benefits, forming part of the revised rules of the fund, which came into operation on 01 July 1997, provides as follows insofar as the payment of a withdrawal benefit is concerned:
WITHDRAWAL BENEFIT

On resignation or dismissal

The sum of the amounts in the member’s contributions account, the additional contributions account and the percentage of the net employer’s contributions account as determined by the following table:

<table>
<thead>
<tr>
<th>Years of membership on date of exit</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>0</td>
</tr>
<tr>
<td>More than 1 year, less than 2 years</td>
<td>50</td>
</tr>
<tr>
<td>2 or more years</td>
<td>100%</td>
</tr>
</tbody>
</table>

(Membership of the African Bank Staff Pension Fund which was terminated on 30th June 1997 shall qualify for the purpose of determining the member’s share of the net employer’s contributions account, as set out in the above table)

On retrenchment or redundancy

The same as the resignation or dismissal benefit, except that the member shall be entitled to 100% of the net employer’s contributions account irrespective of the number of the completed years of membership of the fund.

9. On the membership schedule that was provided together with Metropolitan’s response dated 15 May 2001 and the present response from Old Mutual dated 19 November 2001, the employer’s contributions have not been included in the calculation of the complainant’s retrenchment benefit. In fact, in the latter response, Old Mutual explicitly states as follows in the second paragraph thereof:

The fund was registered as a defined benefit arrangement, and the employer’s contribution is not refundable to the member.

10. This statement flies in the face of the provisions of rule A3.1, read with the Schedule of Benefits, which provide for the refund of the employee’s contributions, his additional contributions, if any, together with 100% of the employer’s net contributions. It is clear, therefore, that in its computation of the complainant’s retirement benefit, Metropolitan Life Limited and/or Old Mutual did not include the
amount representing his employer’s nett contributions. Accordingly, the amount of
R358 041-34 that was paid to the complainant as a retrenchment benefit is not the
correct amount that should have been paid to the complainant in terms of the rules of
the fund.

11. It is clear, therefore, that the complainant has suffered prejudice as a result of having
an incorrect and inadequate retrenchment benefit paid to him by the fund. Such
conduct on the part of the fund amounts to maladministration of the fund.

12. Neither Old Mutual, nor Metropolitan Life Limited has furnished this Tribunal with the
figure representing the total contributions made by the employer and that
representing the employer’s nett contributions. Accordingly, I am not in a position, at
this stage, to determine the amount that is still owing to the complainant. Rule A 2.2,
read with the Schedule of Benefits, however, gives an indication of the rates of
contribution of the employer, as follows:

**RULE A 2- CONTRIBUTIONS**

**A 2.2 EMPLOYER**

A 2.2.1 The employer is required to make monthly contributions to the fund in respect of
every member (pensioners excluded) at the rates set out in the Schedule. Such
contributions are rounded off to the nearest cent.

13. The Schedule of Benefits reads as follows:

**CONTRIBUTIONS**

<table>
<thead>
<tr>
<th>Member’s contributions</th>
<th>5% of the member’s monthly salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer’s contributions</td>
<td>5% of the member’s monthly salary</td>
</tr>
<tr>
<td></td>
<td>PLUS</td>
</tr>
<tr>
<td></td>
<td>The premiums in respect of the Group</td>
</tr>
<tr>
<td></td>
<td>Insurance Benefits</td>
</tr>
</tbody>
</table>
Net employer contributions

The employer’s contributions minus the following:

(i) the administration charges;
(ii) contributions to the Reserve Account, if any;
(iii) the premiums in respect of the Group Insurance benefits.

14. Having made the findings set out in paragraphs 10 and 11 above, I accordingly order as follows:

14.1. Old Mutual Life Assurance Company (SA) Limited is joined as the third respondent to this complaint.

14.2. The second and third respondents are ordered to furnish this Tribunal and the complainant, by no later than Friday 14 December 2001, with a breakdown of the following:

14.2.1. The total contributions made by the complainant’s employer for the duration of the complainant’s membership;

14.2.2. The amount of the administration charges;

14.2.3. The total contributions to the Reserve Account, if any;

14.2.4. The total premiums paid by the employer in respect of Group Insurance benefits.

14.2.5. The calculation of the nett employer contributions.
14.3. The first respondent is ordered to show cause, by no later than Friday 21st December 2001, why it should not be ordered to pay to the complainant, within six weeks of the date of this order, the amount representing the nett employer contributions, together with interest thereon, calculated in terms of the provisions of the Prescribed Rate of Interest Act, from 1 August 1999 to the date of payment thereof.

DATED AT CAPE TOWN THIS 5th DAY OF DECEMBER 2001.

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JOHN MURPHY
PENSION FUNDS ADJUDICATOR