

Pension fund slammed for changing rule

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In a recent determination, the Pension Funds Adjudicator slammed the board of the Municipal Employees Pension Fund, a defined benefit fund, for changing a fund rule without official approval, resulting in a member leaving the fund with a lower payout than he had expected.

Your pension fund cannot change the rules of the fund without the change being approved by the Registrar of Pension Funds.

The adjudicator, Muvhango Lukhaimane, condemned the conduct of the board, who paid a member, TS Raboshakga of Pretoria, a benefit according to an amended rule that had not been approved by the registrar.

The fund applied the rule “notwithstanding two rulings by the Supreme Court of Appeal that the rules of a fund come into effect only once they have been approved and registered by the registrar”, Lukhaimane says.

Raboshakga worked for the Aganang Local Municipality from October 1, 2005 to June 30, 2013, and was a member of the Municipal Employees Pension Fund, administered by Akani Retirement Fund Administrators.

He was paid out the amount of his contributions plus interest in respect of his pensionable service multiplied by 1.5, according to the unapproved amended rule.

The existing, approved rule at the time of Raboshakga’s departure stated that a withdrawing member was entitled to the amount of his contributions plus interest in respect of his pensionable service, all multiplied by three.

The respondents (the fund’s board of trustees) said an actuarial evaluation on February 28, 2011, had determined there was a shortfall of contributions for future funding. At a board meeting held in June 2013, a resolution was passed to amend the withdrawal benefit so that it would be calculated according to 1.5 times instead of three times a member’s contributions and interest, in line with the actuary’s recommendation. The rule amendment had been submitted to the Financial Services Board for registration.

In her determination, Lukhaimane says that, in terms of section 13 of the Pension Funds Act, the rules of a registered fund are binding on the fund, its members and officers. The fund may pay out to its members only those benefits provided for in its rules.

She says that, in the case of the Municipal Employees Pension Fund, the amendment to the withdrawal benefit rule had no legal validity until it had been approved and registered by the registrar.

“The [board’s] conduct of acting on an unregistered rule points to a lack of proper management,” Lukhaimane says.

“The facts indicate that the board was advised of a possible financial crisis in 2011 when its actuary made a report. However, the board did not [immediately] submit any rule amendment to change the method of computing a withdrawal value and waited until 2013 to submit the amendment. It also decided to start applying the proposed rule amendment before its approval by the registrar.

“The conduct of the board indicates failure in its duty to protect the interests of the complainant and to execute its duties with due care and diligence. The appropriate remedy is to order the [fund] to pay the balance of the complainant’s withdrawal benefit in accordance with the rules as they stand, with interest,” Lukhaimane says.

Despite repeated attempts to find out from the Municipal Employees Pension Fund how many other people were affected by the wrongful benefit reduction and whether they had been compensated, the fund had not responded by the time of going to print.