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REGISTERED POST

Mr. T.L. Matlou
P.O. Box 456
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Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”) – T L MATLOU (“complainant”) v NATIONAL FUND FOR MUNICIPAL WORKERS (“respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the respondent’s decision to reduce risk benefits.
- 1.2 The complaint was received by this office on 16 November 2007. A letter acknowledging receipt thereof was sent to the complainant on 23 January 2008. On 22 January 2008 a letter was dispatched to the respondent giving it until 21 February 2008 to file its response to the complaint. A response was received from the respondent on 14 February 2008. On 29 February 2008, the respondent’s response

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956

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was forwarded to the complainant in the event that he wanted to file further submissions. On 11 March 2008, the complainant filed his reply with this office.

- 1.3 This complaint was referred to conciliation service for hearing on 27 November 2007 in order to afford the parties an opportunity to settle the matter. However, the parties could not reach settlement and the matter was referred for adjudication. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The respondent is a fund which was established with effect from 1 July 1987 in terms of an agreement which was reached involving most local authorities. In terms of the aforementioned agreement, both the local authority and the member participating in the respondent make monthly contributions equal to 2% of the total remuneration of all members concerned. The object of the respondent in terms of its rules is to provide for retirement benefits and to make provision for death and disability benefits for its members.
- 2.2 The complainant is a member of the respondent and is employed by the Capricorn District Municipality. The respondent on 2 May 2007 addressed a letter to its members, including the complainant, informing them about a decision taken by the trustees to amend risk benefits. Members were provided with three options of which members had to elect one.
- 2.3 The options available to the members were allocated and read as follows:

“Option 1**Default Option:**

1 x annual salary death benefit

1 x annual salary disability benefit

Funeral benefits of R5 000 for the member and qualifying spouse and R3 000 for qualifying children.

The total cost for the above amendment amounts to 2% of salary. This implies that the member's full 2% contribution will be applied towards saving purposes in his/her fund credit.

Note: Option 1 will be compulsory for all new members.

Option 2**Individual choice:**

2 x annual salary death benefit

2 x annual salary disability benefit

Funeral benefits of R5 000 for the member and qualifying spouse and R3 000 for qualifying children

Only members previously having risk benefits amounting to 2 x annual salary or more may choose a risk benefit amounting to 2 x annual salary at death or disability on the attached individual risk choice form. The total cost of this benefit will amount to 3.31% of salary, leaving 0.69% of salary for savings purposes.

Option 3 (Member contributions need to increase)**Individual choice:**

3 x annual salary death benefit

3 x annual salary disability benefit

Funeral benefits of R5 000 for the member and qualifying spouse and R3 000 for qualifying children.

Only members previously having risk benefits amounting to 3 x annual salary may choose a risk benefit amounting to 3 x annual salary at death or disability on the attached individual risk choice form. The total cost of this benefit will amount to 4.6% of salary.

...

Please note that all members will be placed on the default option as mentioned above, until such time than (*sic*) an individual risk choice form has been received.

Eligible members choosing option 2 or 3 must return the enclosed option form, duly signed, in the envelope provided before 31 may (*sic*) 2007.”

[3] **COMPLAINT**

- 3.1 The complainant submits that he was never made aware that the respondent would reduce his risk benefits at any point in the future and contends that such a reduction will affect his planned retirement benefits. The complainant further submits that he wishes to keep his benefits in the previous form because the new arrangement will financially prejudice him.
- 3.2 The complainant requests the assistance of this tribunal in ensuring that his benefits are not reduced as per the decision of the trustees.

[4] **RESPONSE**

This tribunal received a response from the respondent's Principal Officer.

- 4.1 The respondent submitted that the complainant was advised through correspondence that a risk benefits default option was changed from 3 x annual salary risk benefit at death and disability to 1 x annual risk benefit at death and disability. Both members and the employers would contribute 2% of salary towards this category in the fund and this would enhance retirement benefits and provide members with additional benefits.
- 4.2 It was submitted that the complainant was advised that if he wished to retain his higher risk benefit, he should choose that option by returning

the enclosed option form, duly signed by him before 31 May 2007. If the complainant failed to sign the enclosed form and return it by the stipulated date, it would be deemed that the complainant did not want to retain the higher risk option and would automatically be switched to the new option of lower risk.

- 4.3 The respondent indicated that the complainant did not sign the form nor did he return it to the respondent and this implied that the complainant did not elect to have the higher risk benefit.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issue for determination is whether or not the respondent unilaterally changed the complainant's risk benefit to his detriment. The complainant has submitted that the respondent switched his investment benefit from higher risk to lower risk without his authority, and has stated that he was not advised properly in respect of the new arrangement.
- 5.2 The respondent on the other hand has submitted that on 2 May 2007, it issued a notice directing that due to the increase of the risk premiums from the underwriter, the default option of 3 x annual salary had to be reduced so that contributions were sufficient to cover costs. The respondent submitted that it acted within the parameters of the Act and its rules which provide that the board of trustees of the respondent has a fiduciary duty towards its members to ensure that members retire as financially sound as possible.
- 5.3 The submission by the respondent that a notice was issued is not refuted by the complainant. From the evidence before this tribunal, it appears that the decision by the board was communicated to the complainant in writing and the complainant omitted to act on it. The respondent explained in the notice that the complainant could switch

his portfolios or otherwise the default portfolio would apply but the complainant failed to exercise an option.

- 5.4 On the evidence before this tribunal, I cannot find any impropriety in the conduct of the respondent's trustees. The complainant failed to exercise an election which was given to him and since no choice was made, his risk benefits were changed to the default risk choice. Similarly, there is no evidence before this tribunal supporting the complainant's submission that the introduction of the new portfolio has financially prejudiced him. The complainant's retirement benefits have moreover not been impacted in any way, as it is simply his risk benefits that have been reduced.

[6] ORDER

1. In the result, the complaint cannot succeed and is hereby dismissed.

DATED AT JOHANNESBURG ON THIS 28th DAY OF MARCH 2011

DR. E.M. DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrates' Court

Parties unrepresented