

PENSION FUNDS ADJUDICATOR

Important rulings concerning the payment of a death benefit to a trust company

Only where the guardian is not competent or qualified to administer a minor's benefit

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The Pension Funds Adjudicator issued 2 important rulings concerning the payment of a benefit to a trust company.

The first matter was Lebepe v Premier Foods Provident Fund, NBC Holdings (Pty) Ltd and NBC Umbrella Trust.

The late Mr Lebepe was a member of the respondent fund until his death on 1 April 2004. The fund decided to allocate R33,000 to the widow (the complainant) in the form of a lump sum.

The three minor children received the remaining balance of the benefit of R200,000.00, which was placed with the third respondent (Trust Company). The complainant, as the guardian of the three children, received a total of R675.00 per month from the Trust Company in respect of the maintenance of the children.

The complainant was dissatisfied with the fund's decision to place the benefit with a trust company. She stated that she was never consulted by the fund and that the trustees acted arbitrarily in setting up a trust in that this deprived her of her right to administer the benefit on behalf of the minor children.

The complainant further submitted that she approached an insurance company for a quotation on interest payment she would receive on an endowment policy to the value of R200,000.00.

The insurer quoted her a monthly interest payment of R1,200.00. The complainant also alleged that the insurer's initial advisory fee was less than the monthly administrative costs deducted in respect of the children's trust.

The Adjudicator firstly held that the crisp issue for determination was whether the fund's decision was justified in placing the minors' benefits in trusts rather than paying directly to the complainant, who is the children's mother and legal guardian.

At the outset, the Adjudicator emphasised that it is not the role of this Tribunal to enter into the realm of speculation regarding the advantages and disadvantages of a trust as compared to endowment policies.

The Adjudicator held that our Courts have decided that only in instances where it is found that the guardian is not competent or qualified to administer a minor's benefit would the interests of justice best be served by placing the benefit in a trust.

Thus, there is a duty on the board to carefully consider the facts of each case before depriving the guardian of the right to administer a benefit on behalf of the child. The Adjudicator further held that in the instant matter, the trustees failed to consult the complainant and in fact they totally ignored the complainant when they decided on the mode of payment.

From the evidence, it appeared as if the complainant was competent in managing monies and that she attended at least three financial administration courses. Moreover, the trustees of the fund did not doubt the capability of the complainant to handle the monies on behalf of the minor children.

Therefore, the Adjudicator was of the view that the fund's decision regarding the mode of payment of the children's benefit must be set aside. The fund was directed to pay the complainant the remaining amount of the share of the children's death benefit in full, less any deductions permitted by the Act together with interest thereon.

The second matter was Mafe v Barloworld (SA) Retirement Fund.



The complainant was the widow of the late Mr Mafe who was a member of the fund during his lifetime until his death. During November 1999 a lump sum of R136 080,00 became available for distribution.

The fund resolved to pay the entire death benefit to the complainant and the three minor children. However, the board also resolved to pay the entire benefit to the Barlow Group Pension Funds Trust, the trustee of which is Syfrets Trust Limited.

An initial monthly income of R700.00 was paid to the complainant to cover the maintenance needs, medical expenses and educational expenses of the complainant and the three children.

The complainant was unhappy with the decision of the fund and stated that she was not consulted prior to the decision being made and that the fund acted on the strength of a letter from the deceased's employer wherein it was stated that she was "uneducated and [could] not handle large sums of money".

According to the complainant, the trust is currently not serving her interest and the interest of her children in that the monthly income is inadequate.

The Adjudicator examined the facts as considered by the fund and firstly held that there was no indication that the complainant was labouring under a legal disability like insanity or insolvency. Furthermore, the fund did not conduct its own investigation before acting in this patronising fashion of depriving a major with full legal capacity to manage her own affairs.

Regarding the payment of the minor's benefit to a trust, the Adjudicator held while payment to a trust company is permitted by the law, this does not mean that the board may automatically pay the benefit to a trust without considering the mode of payment involving direct payment to the guardian.

Furthermore, the board also has to consider the cost implications involved in payment to trust as against other modes of payment. The Adjudicator concluded that this was not considered at all in this case and the board blindly relied on the deceased's employer's word instead of conducting its own investigation and properly applying its mind to the matter.

Therefore, the decision of the fund to pay the proceeds of the entire death benefit to the trust company was set aside and the matter was referred to the board of management to re-exercise its discretion in respect of an appropriate mode of payment.