

PENSION FUNDS ADJUDICATOR

Fund not permitted to retrospectively reduce benefits already accrued and paid to member

Pension Funds Adjudicator's ruling

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The Pension Funds Adjudicator has issued a ruling in the matter of A.J Nortje (complainant) vs Joint Municipal Pension Fund (respondent) regarding the respondent being held liable to pay the complainant's benefit as per the complainant's election as at date of accrual and not to retrospectively apply a rule to reduce the benefit that was only registered after date of accrual of the benefit.

Facts

The facts of the matter are briefly the following:

At the time of the complainant's retirement he held the position of Chief Licensing Officer with the Ekurhuleni Metropolitan Council ("the employer"). By virtue of his employment, he was a member of the respondent.

On the 09 October 2002 the complainant decided to take early retirement (at the age of 55) on 31 January 2003.

In terms of a benefit statement dated 5 December 2002 the respondent indicated that the complainant's actuarial value in the respondent as R2 719 872.00. As at 24 January 2003 the respondent provided the complainant with a calculation of his retirement benefit as being R3 250 853, 00.

On 4 and 5 February 2003 the complainant requested further information regarding the structuring of his pension, after being provided with the different options he was requested to inform the respondent by no later than 6 February 2003 of his choice, this the complainant complied with.

On 6 March 2003 the complainant was informed by the respondent in writing that the gratuity would be paid into his bank account and that the pension amount (annuity) would be paid monthly.

On 15 April 2003 the actuary in a letter to the respondent confirmed the complainant's gratuity of R512 306.31 and monthly pension of R10 708.99 but indicated that should the pension be converted into a lump sum as at 31 January 2003 the amount payable would be R2 512 065.00 as opposed to the calculation provided on 24 January 2003, which indicated the lump sum as R3 250 853.00.

The actuary further indicated that this value was based inter alia on the "lighter valuation basis applied from 1 January 2003" as a result of the losses sustained by the respondent.

In April or May 2003 the complainant put on record that he had elected to remain as a pensioner of the respondent based on the benefits associated therewith.

During November 2003 the trustees of the respondent decided to take away the 12% pension increase granted to the pensioners from 1 March 2002 and pensions were reduced by effectively 10.7%, in line with this in December 2003 the respondent addressed a letter to the complainant in which it indicated inter alia that his monthly pension and gratuity had been overpaid by R84 725.71, which amount the respondent was claiming.

The Respondent further provided that should the complainant repay the said amount before 31 December 2004 no interest would be added, if not interest would be charged at the rate of 8% per annum would be added should the complainant wish to repay the amount over a longer period; the maximum period not exceeding 60 months.

The complainant submitted a complainant with the following allegations:

- that the reduction in his monthly pension by R1 490.63 and the gratuity conflicts with the original retirement benefit provided by the respondent comprising the R512 306.31 gratuity and a monthly pension of R10 708.99.
- He further submits that the spouse's benefit which comprised 100% of his monthly pension plus a



gratuity of 6 month's pension, which was of application at the time of his retirement, should be applicable to him.

The respondent's explanation of why the complainant's monthly pension was reduced and the repayment of a portion of the lump-sum gratuity payment was attributable to the change in the financial circumstances of the respondent and that the rule amendments approved by the Registrar, entitled it to reduce the complainant's benefits.

Determination and reasons therefore

The Adjudicator held the following with respect to issues that required determination:

The first issue for decision was whether the respondent was entitled to reduce the complainant's monthly pension as it did with effect from 1 November 2003 and further whether the respondent is entitled to claim the alleged overpayment of the gratuity in the amount of R71 310.04 from the complainant.

On this point the Adjudicator held that there is no authority to justify a reduction of the gratuity benefit that had already accrued and been paid to the complainant.

Further with respect to the rule amendment even if the trustees in consultation with the actuary were entitled to reduce the benefits, the reduced benefits could not be applied retrospectively and may not be applied to already accrued and vested rights.

Therefore in the present case, the complainant is therefore entitled to his gratuity of R512 306.31. Thus, any claim in respect of an overpayment in this regard is flawed.

Similarly, the respondent was not allowed to reduce the complainant's monthly pension of R10 708.99, which had already accrued to him. The question of until which date had the monthly pension accrued to the complainant bearing in mind that the complainant is a pensioner member of the respondent.

The simple answer is that the monthly pension of R10 708.99 had accrued to the complainant until the registration of the rule amendment, which according to the rules was on 6 April 2004.

The reduction applied before this date was therefore unlawful. It also follows that as of 6 April 2004 after the rule amendment only then is the respondent permitted to reduce the complainant's monthly pension.

The third issue is whether the reduction in the spouse's pension from 100% of his monthly pension (which obtained at the time of his early retirement) to 65% of his monthly pension is lawful.

On these issues that Adjudicator held that with regards to the reduction in the spouse's pension from 100% of his monthly pension to 65% this benefit is one that has not yet accrued to the complainant.

Thus it is this amended rule, which was registered on 6 April 2004 pursuant to amendment no.1, which will have application upon the complainant's death save in the event that the rule is further amended.

The fourth issue is whether the respondent was entitled to scrap the gratuity of 6 months' pension payable to the complainant's dependants upon his death, which also obtained at the time of his retirement.

The adjudicator held that similarly, the scrapping of the gratuity of 6 months' pension payable to the complainant's dependants upon his death, which also obtained at the time of his retirement, is also not an accrued right to which the complainant and/or his dependants have become entitled and as such the amended rule, which was registered on 6 April 2004 pursuant to amendment no.1, which will have application upon the complainant's death save in the event that the rule is further amended.

Therefore the Relief awarded was the following:

1. The respondent is directed to pay the complainant a monthly pension of R10 708.99 from November 2003 to March 2004 less any amounts already paid, and less any applicable deductions in terms of the provisions of the Act, within one week of the date of this determination;
2. The respondent is directed not to claim any amount in respect of the gratuity of R512 306.31 which has already accrued to and been paid to the complainant;
3. The respondent is to pay to the complainant interest on the amount pursuant to what is laid out in 1 above at the rate set out in the Prescribed Rate of Interest Act, 55 of 1975 from the dates upon which the monthly pension was due until the date of final payment.