Case law update – Procedural matters

This update discusses several recent determinations / judgements relating to procedural matters that have an impact on pension funds and insurance benefits, and where applicable sets out the position adopted by the MMI Sponsor Funds.

A. Summary

1. Habib v Nampak Group Pension Fund and others (2017) JOL 37961 (PFA)

- Once a member has made an election on how his withdrawal benefit will be paid, the fund has an obligation to request a tax directive. Once a tax directive is issued, it is binding and cannot be cancelled.
- The MMI Sponsor Funds apply for a tax directive once they have received all the requirements for the benefit to be paid. The Funds' forms indicate that the South African Revenue Services (SARS) does not allow for the cancellation of a tax directive once it is received, and that the member must consider his choice carefully before sending the form for processing.

2. Jones v African Oxygen Limited Pension Fund and others (2017) JOL 379629 (PFA)

- A member cannot receive a benefit that is more than what he is entitled to, even where a fund is negligent and gives the member an incorrect quotation of his benefits.
- The FundsAtWork Umbrella Funds are defined contribution funds. The Funds' rules specify the contribution to be paid by the member and employer, but do not guarantee or specify the amount of the withdrawal benefits. When a member withdraws from the fund, he will be entitled to receive the amount in his retirement savings account.

3. Mapheto v Sentinel Retirement Fund and another (2017) JOL 37966 (PFA)

- The Pension Funds Adjudicator (PFA) found that the fund unreasonably rejected the member's claim for a disability benefit even though the member submitted medical evidence proving his claim. The employer's occupational medical practitioner had also found the member to be medically unfit to continue with his own occupation.
- The General Rules of the FundsAtWork Umbrella Funds provide that a member is disabled if he meets the requirements set out in the insurance policy under which the insurer insures the disability benefit. If the member meets those requirements, he will be paid a disability benefit.

B. Case law

1. Habib v Nampak Group Pension Fund and others (2017) JOL 37961 (PFA): Pension Fund Adjudicator – Consultation with member before applying for tax directive

Mr Habib's employment was terminated on 30 September 2015 and he became entitled to a withdrawal benefit from the Nampak Group Pension Fund. Through a financial adviser, he submitted a withdrawal form to the fund and chose to take a portion of his withdrawal benefit as a lump sum. He requested that no action be taken if there were any tax implications. The fund applied for a tax directive and R127 588.34 was deducted from Mr Habib's withdrawal benefit as per the tax directive. Mr Habib lodged a complaint with the PFA on the basis that the fund had a duty to inform him of the tax implications of the election that he made before applying for the tax directive. He stated that had he been informed of the tax implications, he would have elected to take a smaller lump sum. He claimed that he suffered a loss as a result of the tax impact.

The PFA found that once Mr Habib had made an election on how his withdrawal benefit was going to be paid, the benefit accrued on that date for tax purposes. The fund had an obligation to request a tax directive once Mr Habib had made his election. SARS only allows for a tax directive to be withdrawn when the reasons provided for the tax directive were incorrect or when the taxpayer's details on the directive application form were incorrect, none of which applied to the facts.

The PFA further found that the fund was not under any duty to inform Mr Habib of every step taken to process his withdrawal claim; once a tax directive was issued by SARS it was binding and could not be cancelled. There was nothing on the evidence presented to show that the fund had acted wrongly when handling the application for Mr Habib's tax directive. Mr Habib was assisted by a financial adviser when he made his election. The financial adviser could have advised him of the possible scenarios and implications of his election.

The complaint was dismissed.

Approach adopted by MMI Sponsor Funds

The Funds, or the administrators, apply for a tax directive once they have received all the requirements for the benefit to be paid. The Funds' forms indicate that SARS does not allow a tax directive to be cancelled once it is received and that the member must consider his choice carefully before sending the form for processing.

FundsAtWork members have access to a digital experience, the smart exit process, to manage their financial wellness when they leave their job. In a few easy steps they can compare their options and if they chose to take all or part of their retirement savings in a cash lump sum, they will know upfront the estimated tax they will pay.

2. Jones v African Oxygen Limited Pension Fund and others (2017) JOL 379629 (PFA): Pension Fund Adjudicator – Incorrect quotation of retirement benefit

Mr Jones was employed from 1 November 1989 to 31 December 2015 and was a member of the African Oxygen Limited Pension Fund, which is a defined benefit fund. A defined benefit fund offers its members a benefit when leaving the fund which is calculated according to a formula which considers several factors. In February 2015, Mr Jones received a quotation on his retirement benefit, which stated that he had a retirement benefit of R12 019 254.84. Mr Jones decided to take early retirement. In December 2015 he received a second quotation, which showed a retirement benefit of R11 638 313.73, which was lower than the benefit quoted in the first quotation. The fund told Mr Jones that the first quotation was incorrect and had not taken into account other factors that impacted the calculation of his benefit.

Mr Jones was unhappy with this and lodged a complaint with the PFA. His argument was that he had decided to retire on the basis of the first quotation, because he intended to retire when his benefit had reached R12 000 000. If the fund not provided him with the incorrect quotation, he would not have chosen to take early retirement. As a result of his early retirement based on the incorrect quotation, he claimed to have suffered a loss.

The PFA found that because Mr Jones was a member of a defined benefit fund, the calculation of his retirement benefit depended on several factors such as his age and his life expectancy; the life expectancy of his spouse; the potential for any children that may be eligible for a children's pension (which is paid only on the death of a member); and the market conditions, especially interest rates. At the time the first quotation was provided to Mr Jones, he had two children who were potentially eligible for the children's pension benefit. At the time of his retirement, 10 months after the first quotation was given, one child turned 23 and Mr Jones only had one month for which children's pension could potentially be due. This affected the calculation of his benefit.

While the fund had a duty to provide Mr Jones with the correct information regarding his benefit, he was not entitled to be paid more than what was due to him. Mr Jones was not entitled to R12 019 254.84, as this amount was not calculated in terms of the rules of the fund, but was the result of an error. The fund was negligent in providing Mr Jones with an incorrect quotation and breached its duty to keep its books in order. Mr Jones also failed to show that he suffered a financial loss because of the incorrect quotation and failed to quantify such loss.

The complaint was dismissed.

Approach adopted by FundsAtWork Umbrella Funds

The Funds are defined contribution funds. The Funds' rules specify the contribution to be paid by the member and employer, but do not guarantee or specify the amount of the withdrawal benefits. When a member withdraws from the fund, he is entitled to receive the amount in his retirement savings account. The value of the retirement savings account will be adjusted in line with the investment performance of the investment portfolios the member is invested in.

3. Mapheto v Sentinel Retirement Fund and another (2017) JOL 37966 (PFA): Pension Fund Adjudicator – Unreasonable refusal of disability benefit claim

Mr Mapheto was employed by AngloGold Ashanti Limited as a miner. In November 2015, his employment came to an end on the basis of medical incapacity as he had been diagnosed with osteoarthritis. He submitted a claim for payment of a disability benefit to the Sentinel Retirement Fund, which he had been a member of because of his employment. In terms of the rules of the fund, the trustees of the fund in their sole discretion determine whether a member has become totally and permanently disabled. The responsibility rests on the member to prove his disability on the basis of medical evidence. If proven, the fund would pay a disability benefit in the form of a life-long pension. Mr Mapheto submitted medical records to the fund's claims committee from two medical practitioners who found that he was medically unfit to continue in his occupation. Mr Mapheto was also examined by his employer's occupational medical practitioner, who also submitted a medical certificate saying that he was medically unfit to continue in his current occupation, with restrictions on the ability for him to be placed in any other occupation.

The fund rejected the claim, stating that Mr Mapheto had not proven that he was totally and permanently disabled for his own or a similar occupation. Mr Mapheto lodged a complaint with the PFA, stating that he should have received a disability benefit and was unhappy that he only received a withdrawal benefit.

The PFA found that the decision to decline Mr Mapheto's claim for the disability benefit was unreasonable. Mr Mapheto had submitted medical reports to support his claim and his employer's occupational medical practitioner had also submitted a medical certificate confirming that he was medically unfit to continue in his own occupation. Additionally, the fund came to its decision without assessing Mr Mapheto. The PFA found that based on the medical evidence submitted by Mr Mapheto, the decision by the fund not to declare him medically unfit was unreasonable.

The PFA ordered that the fund calculate and pay Mr Mapheto a disability benefit.

Approach adopted by FundsAtWork Umbrella Funds

The General Rules of the Funds provide that a member is disabled if he meets the requirements set out in the insurance policy under which the insurer insures the disability benefit. The member will become entitled to his retirement savings account and if the disability continues until the end of the waiting period, the member will also become entitled to the lump sum disability insurance benefit. The disability insurance benefit is subject to the terms, conditions, restrictions, exclusions and underwriting conditions that the insurer may impose from time to time.

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