

## IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.:PFA/WE/435/99/LS

In the complaint between:

Michael Adams

Complainant

and

Guarantee Trust Group Pension Fund

First respondent

Wasteman Group (Pty) Ltd

Second respondent

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### **DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF 1956**

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1. This is a complaint lodged with the office of the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act relating to the benefit received by the complainant on his withdrawal from the fund. The complainant received two withdrawal benefits for two different periods of membership whereas he contends that he is entitled to a greater overall benefit calculated on the basis of unbroken contributory service.
2. The complainant is Michael Adams, an adult male of Lansdowne, Cape Town. He is unrepresented in this matter.
3. The first respondent is the Guarantee Trust Group Pension Fund (“the fund”), a pension fund falling within the definition of a pension fund organisation contained in section 1 of the Act.
4. The second respondent is Wasteman Group (Pty) Ltd, a private company duly incorporated in terms of the company laws of South Africa.

5. The complainant was employed by Wasteman Group (Pty) Ltd (“the employer”) as a heavy-duty driver in or about 1994 and became a member of the Guarantee Trust Group Pension Fund (“the fund”) on 1 February 1995. The fund is administered by Momentum Employee Benefits (Pty) Ltd (“Momentum”).
6. The complainant became ill whilst on duty at work on 13 January 1999. He was admitted to Victoria Hospital the following day and diagnosed with Unstable Angina. He returned to work on 1 February 1999.
7. It appears that the complainant was on and off work for a period thereafter, unable to perform his duties properly on account of his illness.
8. During that period, the complainant states he received a telephone call from the employer’s divisional operations director, who requested him to collect claim forms so that he could apply for a disability benefit.
9. The employer participates in a scheme known as the Guarantee Trust Income Protector Plan (“the Scheme”) which is underwritten by Momentum Employee Benefits (Pty) Ltd. The complainant’s claim for disability was submitted to Momentum in or about March 1999.
10. However Momentum declined the claim in a letter dated 21 June 1999 on the grounds that the medical evidence submitted by the complainant in support of his application did not qualify him for the disability benefit.
11. According to Momentum, a withdrawal form dated 7 May 1999 was subsequently received from the employer in respect of the complainant stating that he had resigned with effect 31 May 1999. The fund’s rule governing benefits on withdrawal reads:

- (A) in respect of a member with less than 5 years' scheme membership, a refund of
- (a) (i) member's contributions to the scheme (if any) up to 28 February 1989 with 5 per cent per annum compound interest
- plus
- (ii) member's contributions to the scheme on or after 1 March 1989.
- with the sum of the amounts in (i) and (ii) increased by 7,5 per cent per annum compound interest in respect of the period of contributory membership after 1 March 1989
- plus
- (b) a portion of the difference between the benefit in (a) above and the member's equitable share as the employer at his absolute discretion may determine
- subject to a maximum of the member's equitable share
- or
- (B) in respect of a member with 5 or more years' membership, the member's equitable share

12. Having less than five years membership of the fund, Momentum paid the complainant a withdrawal benefit in terms of "A" above, an amount of R91088.74 (after tax), on 2 July 1999.
13. The complainant returned to work on 13 September 1999 and rejoined the fund with effect from 1 October 1999. However as a result of a disciplinary hearing, the complainant was dismissed on 4 December 2000. He received a second withdrawal benefit from the fund of R2862.18 after a deduction for tax.
14. The complainant however denies that he resigned from the employer in 1999 and claims that he is entitled to a benefit calculated on the basis of unbroken contributory service for the period 1 February 1995 to 4 December 2000. In effect, the complainant wants a benefit calculated on the basis that he never withdrew from the fund.

15. However in his complaint, the complainant makes the following admission:

I then instructed that my pension be made paid up, to which he [the broker] replied that I should think it over that weekend and phone him the Monday the 5 July 1999, to let him know what my decision was. I phoned him on the 5 July 1999 and informed him that I needed my money...

16. Therefore, on his own version, the complainant requested that he be withdrawn from the fund so that he could receive a withdrawal benefit. Perhaps the complainant was under the mistaken impression that withdrawing from the fund would not interrupt his contributory service.
17. However the evidence appears to refute this. A letter dated 12 April 1999 from the complainant's broker addressed to the complainant reads in part:

I was if you recall very reluctant for you to withdraw from the fund and if you recall I requested you to give it a great deal of thought... I was trying in your interest to persuade you not to resign.

18. Therefore the complainant's broker specifically advised the complainant not to withdraw from the fund. The probabilities are that he explained to the complainant that he would thereby break his contributory service and in turn forfeit his right to a greater benefit from the fund.
19. However even if the broker did not provide the complainant with such explanatory advice, I am satisfied that the complainant was under a duty to ensure that he understood the import of what he was doing before taking such a drastic step and he is therefore the master of his own downfall.
20. Thus by withdrawing from the fund in July 1999, the complainant broke his contributory service. He therefore did not complete unbroken contributory service for

the period February 1995 to <sup>5</sup> December 2000 and is accordingly not entitled to a withdrawal benefit calculated on that basis.

21. For the foregoing reasons, the complaint is dismissed.

DATED at CAPE TOWN this 31st day of October 2002.

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**JOHN MURPHY**

PENSION FUNDS ADJUDICATOR