

Pension fund injustice

proposed amendments to the Act

The memorandum supporting the Pension Funds Second Amendment Bill sums up the gross injustices of pension fund management over the past 20 years. During this time, pension funds did not give transferring or retrenched members a share in the provision for a fall in the stock market. The memorandum says that, with hindsight, this was unfair.

The memorandum then emphasises the need to correct past injustices: 'It is necessary to legislate in order to give [these members] any share, because once a member is paid his benefit, the member loses any right to any further claim against the fund.' The current Pension Funds Act does not give former fund members any rights.

Finally, the memorandum acknowledges the most horrific injustice of past pension fund practices. Union negotiators may have negotiated the transfer of the full reserve value for each member successfully. However, the fund may not have transferred this value. The memorandum states: 'Most of the transfers had occurred more than three years ago. Members may now feel that they did not get what was promised in whatever agreement was signed between the union and the employer.' However, these members would be unsuccessful in claiming anything through the courts because their claims would be unenforceable in court.

Manene Samela from SACWU considers the Pension Funds Second Amendment Bill and argues that it does not go far enough.

The bill falls short

Sadly, there is no evidence that the proposed Pension Funds Second Amendment Bill will fix past injustices. To the contrary, the bill appears to legitimise the injustice of past mass transfers.

Minimum transfer values

Instead of reinforcing the need to transfer the full value set aside for funding members' benefits, the bill provides for 'minimum transfer values'. The value of this proposed minimum benefit, however, is not disclosed. A draft, issued to NACTU last year, indicated a proposed minimum value that falls far short of correcting even the worst abuse in the transfer process.

Repatriation to employers

The main focus of the bill appears to be on allowing reserves, previously set aside for funding members' benefits, to be transferred to companies.

It seems that, using a careful play on words, this bill will strip billions of rands

away from pension fund members and, give it to the companies. Overseas investors own many of these companies. Thus, instead of channelling these billions to build our country, we are trying to please overseas investors. In the process, we are stripping our economy of its wealth.

A case study

Over a very short period, the pension fund industry created surplus funding running into hundreds of billions of rands. This happened with mass transfers from traditional company-controlled pension funds to union and other employee-controlled pension funds. An example of this is the Sentrachem Group Pension Fund. It demonstrates precisely what the memorandum to the Bill refers to as unjust practice.

The R650-million Sentrachem Pension Fund moved from a R5-million to a R408-million surplus in 1998 when only 300 of the original 6 000 members were left in the fund.

During the early 1990s, transfer negotiations with Sentrachem appeared to go well. The trustees of the fund and the company management agreed to the COSATU and NACTU unions' demand for transfer of the full reserve values in the fund to each member.

An actuary was employed to calculate the transfer values. He reported to the Financial Services Board (FSB) that he had used the same actuarial rules and methods of calculating members' reserves as was used in the last valuation report. Based on this, the FSB approved the transfers.

However, during the recent Kransdorff versus Sentrachem case, it was discovered that the actuary had not used the same rules. The rules relating to the calculation of the assets had been changed substantially.

It was later discovered that the same change to the valuation base - which is the amount of money in the fund - applied to the transfer values of union members. This meant that union members received 40% less of their transfer values. The Sentrachem Pension Fund suddenly found itself with a 'surplus' of R408-million.

The company subsequently used the surplus to give itself a 'contribution holiday' - which meant that it did not have to pay any contributions to the fund for some time. Apparently, the company, owned by US-based Dow Chemicals, used a large portion of this money to offset its medical aid liabilities.

The R408-million in this pension fund, originally earmarked for South African workers, has effectively been transferred to the United States. While the South African economy will have to cope with this loss, US shareholders reap the rewards.

Creation of surpluses

So-called pension fund surpluses have been created in three ways. The first, as previously mentioned, was simply to withhold portions of transfer values in mass-transfer and retrenchment payments.

The second method has been to grant pension increases to pensioners at rates much lower than the fund could afford. This practice has been devastating to the country's economy and pensioners' well-being. Instead of pensioners spending money on food and clothing, the money is used for company contribution holidays and translated into company profits.

The third method has been the systematic weakening of valuation bases. In the Revlon Pension Fund transfer, the actuary, on instruction from the employer, simply weakened the valuation base by 30% immediately before an already

negotiated mass-transfer. Another actuary, employed by the union to check the transfer values, explained this weakening as follows: 'What was achieved by weakening this basis was that every member in the pension fund at the time of transfer was given a share of the assets, which existed at that time.'

Immediately after the transfer, the Pension Fund actuary reinstated the original conservative valuation base for the remaining members.

A lack of exposure

So why has such a massive injustice gone unnoticed by the public and why has the FSB failed to correct the situation?

Secrecy has dominated this process. At the Nedlac negotiations on this issue, delegates were asked not to make public any aspect of the negotiations. A business representative felt that it would be dangerous to evoke the emotions of the workers before the negotiation process was finished.

Since then, little detail of what the real issues are about have been made public. The little that has been made public is hidden on the last page of the memorandum of the proposed bill - almost as an afterthought. The bill itself fails to attend to the alleged unfairness referred to in the memorandum.

Another reason for the little exposure this massive injustice is receiving is that workers find it difficult to understand 'complex actuarial terminology. Actuaries and even the Pension Funds Adjudicator



The bill will not fix past injustices against workers.

further confuses this terminology by interpreting surpluses to mean something different from what the Pension Funds Act (Regulation 15) states.

Feeble explanations

Now that it has been discovered that the full values were not transferred as promised, actuaries argue that the original actuarial calculations were incorrect. Too much money was earmarked for each member's retirement. This over-funding was corrected when members transferred out of the funds. Yet, this was done without informing members.

The explanation sounds almost plausible

until you discover that the remaining members continued to be funded with the same calculations previously used. It seems that only members who transferred were funded 'incorrectly'.

The explanation is even more questionable when you consider that the risk factor of the investments in our unstable stock market has been moved from companies to individual members.

In addition, the impact of AIDS - the reason why so many companies suddenly wanted out of their traditional pension funds - will now affect individual members. Previously, companies would have carried the cost of increased insurance to pay for high death and disability benefits. Now, the members have to carry this cost with significantly lower pension values.

Some actuaries argue that the correct values have been transferred despite the fund suddenly having a massive surplus. Many union negotiators were led to believe they were negotiating the sharing of surpluses, when the values referred to were actually part of the members' reserves.

Many actuaries and pension fund trustees use the term 'market value surplus' in negotiations with unions, but not in the valuation reports submitted to the FSB. It is a misleading and meaningless term. Referring to a portion of the reserves set aside for funding members' benefits as 'market value surplus' and then negotiating a sharing of this surplus, is unacceptable.

Remuneration packages

Over the years, union negotiators have had to contend with the repeated arguments by companies that they could not increase wages as much as the workers demanded. A frequent argument by employers would be the added cost of pension contributions. The companies would add this cost to the overall payroll cost to

demonstrate how well the workers were being paid. Now, through this bill, the employers are demanding repayment of these pension contributions.

Even worse, many companies have enjoyed pension contribution holidays while claiming this payment as part of the remuneration package. Now they want ownership of so-called surpluses despite their claims during pay negotiations that this money is members' benefits.

Correcting the past

'Let bygones be bygones' is the latest chant by many in the industry. 'Let's focus on the future, the past is too difficult to fix,' they add.

However, in the case of pension funds, the past is the future. Like planting seeds, it takes time before the crops can be harvested. By allowing billions of rands to leave our country's shores, we are laying bare the fields needed to produce our crops in years to come. We will feel the pain of this loss over the next 20 years and more. We simply cannot afford to lose our investments.

It is unlikely the Second Amendment Bill in its current format is going to resolve the injustices of the past. If it becomes necessary for our members to strike to fix these past injustices, it will be a double penalty to the workers: firstly, they lost benefits that had been agreed. Secondly, they will lose wages through strike action. It is truly a sad tale of injustice.

As for our union, SACWU, we will fight to regain our lost benefits. If the companies cannot afford to pay back the millions owed to members, we will demand equity in the company to make up for our losses. But 'let bygones be bygones'. Never! ★

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