



BETWEEN THE TIDES

THE 2012 PENSION LAWYERS ASSOCIATION CONFERENCE

Employment Issues and the Adjudicator – Jurisdiction after Hoffmann

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Introduction

- Introduction
- Resolving Pension Related Disputes
 - PFA
 - LRA
- Hoffmann v Pension Funds Adjudicator & Others
- Concluding Comments

Pension Funds Act

- Both Pension Funds Act and Labour Relations Act intended to resolve disputes quickly and informally.
- Pension Funds Act
 - Aim is to deal with disputes in a procedurally fair, economical and expeditious manner.
 - Referral of written complaint.
 - No legal representation.

Labour Relations Act

- Labour Relations Act
 - Referral to CCMA.
 - Limited scope for resolving “pension disputes”.
 - Unfair Labour Practice provisions-
 - S186(2)(a) – “*‘Unfair labour practice’ means any act or omission that arises between an employer and an employee involving – unfair conduct by the employer relating to ... the provision of benefits to an employee.*”

Labour Relations Act

- Although benefits have been held to include pensions, this is of limited assistance to employees.
- Focus on fairness of employer's conduct in relation to pensions?
- Meaningful relief?

Hoffmann v PFA & Others

- Facts

- Hoffmann was initially employed in 1975 by Donald Crookes (Pty) Ltd.
- In 1992 the company was taken over by Del Monte and Hoffmann's contract of employment was transferred.
- In 1999 he was appointed as the Finance Director of Del Monte.
- Retired in 2006.
- During his employment the managing director at the time informed him that he would be elevated to a Class 1 Executive for pension fund purposes.

Hoffmann

- Benefits of being a Class 1 Executive-
 - Could retire at 55.
 - If employed for more than 4 years as at 1 October 1990, retirement benefit equal to 100% of final salary.
- Liberty confirmed retirement date and calculated his pension benefits.
- Although retirement date was 1 July 2005, he elected to stay to 30 June 2006.
- 3 days before retirement he received an email from Del Monte which indicated his retirement benefits as that of a Class 2 Executive.

Hoffmann

- He was treated as if he had taken early retirement as Class 2 Executives normally retired at 60.
- Annual Pension reduced by 42 %.
- One-third lump sum benefit reduced by 45%.
- Actuarial value penalised by more than R3m.
- Hoffmann approached the Arbitrator for assistance.
- The Arbitrator dismissed the complaint for lack of jurisdiction on the basis that the complaint did not amount to a “complaint” within the meaning of the Act.

Hoffmann

- According to the Adjudicator the dispute about whether or not Hoffmann was a class 1 or 2 executive is a dispute between an employer and an employee relating to terms and conditions of employment. Classification not in terms of rules of the fund. Hence a labour dispute.
- Arbitrator relied on the decision in Armaments Development & Production Corporation of SA v Murphy in finding she lacked jurisdiction.
- Matter referred to the High Court which looked at what is meant by “complaint”.

Hoffmann

- “Complaint” means a complaint of a complainant relating to the administration of a fund, the investment of its fund or the interpretation and application of its rules, and alleging-
- (a) That a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;
- (b) That the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;
- (c) That a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or
- (d) That an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund.

Hoffmann

- In the *Armaments* case the court adopted a narrow and restrictive approach in its interpretation of the definition of complaint and concluded that (a), (b) and (c) had to be restricted to *“disputes between the fund or persons acting for and behalf of the fund on the one hand, and complainants such as employers and employees on the other.”*

Hoffmann

- Court in Hoffmann disagreed.
 - If there is a dispute of fact or law between an employer and an employee in relation to a fund, and the dispute has substantial bearing on pension benefits payable to a member, this qualifies as a complaint in terms of (c).
 - If employer/employee dispute also relevant to pension dispute then no reason why Adjudicator has no jurisdiction.
 - Armaments approach could lead to an unfair, unjust and inequitable result which the Act could not have intended.

Hoffmann

- Facts and circumstances of a case should dictate whether the Adjudicator should be able to deal with it.
- If pension related matter cannot be resolved without the employer/employee dispute being resolved first then the Adjudicator is not the appropriate person to hear the matter. However, should not be a general rule that the employer/employee dispute should first be resolved.
- Where a pension related complaint exists simultaneously or parallel with an employer/employee related dispute, the pension related dispute, if possible, should be resolved by the Adjudicator without having to deal with the employer/employee related dispute.

Hoffmann

- Del Monte's conduct in altering the class categorization had less to do with a labour dispute than with a pension dispute. Hoffmann's categorization as either class 1 or class 2 did not affect his position in the company during his employment, but it did affect his position as a member of the pension fund after termination of his employment.
- His less favourable categorization or classification was effected with the sole purpose of affecting his pension benefits and nothing else. It did not alter his status as an employee (and Financial Director) of Del Monte.

Concluding Comments

- Hoffman did not enjoy the benefit of having his dispute resolved in a speedy and informal manner.
- If the court found against him, he may well have found himself without any remedy.
- Underlying employer/employee dispute should not cloud determination of jurisdiction. Question is whether or not dispute has bearing on pension benefit payable.