

To what extent can fund rules be amended retrospectively to reduce benefits that have already accrued or that have not accrued? A consideration of *Nortje v Joint Municipal Pension Fund* and other relevant case law

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- 24 January 2003 – advised of gratuity of R512 306 and monthly pension of R10 708
- 31 January 2003 – early retirement
- March 2003 – amounts paid to bank account
- November 2003 – 12% pension increase removed
- December 2003 – advised that gratuity is R440 996 and monthly pension of R9 218

- Fund claimed overpayment of benefit
- No benefit guarantee and R1.4 billion loss meant benefits had to reduce
- Rule Amendment 1 registered 6 April 2004 and effective 1 June 2003
- Amendment reduced benefits

- Adjudicator held that amendment does not apply to accrued benefit
- R10 708 pension accrued until 6 April 2004
- Fund could not claim overpayment in respect of gratuity
- Reduction of spouse's benefit lawful, as no accrued right to which spouse was entitled

- Amendment introduced retrenchment benefit with 'reduced' pensionable service
- 14 months later Grobler retrenched
- Relied on Rule 49 which states "the value of an established benefit before such amendment shall not be decreased"
- Adjudicator had no jurisdiction regarding registered amendment

- High Court held established right was unlawfully reduced and ordered the Registrar to cancel the amendment
- Entitled to full period of pensionable service as per the rules prior to the amendment

- Appeal to SCA
- Fund argued that
 - No established benefit when amendment registered
 - Adjudicator and court had no power in law to decide on validity of amendment
- Relied on authorities relating to vested rights

- Held that the amendment was invalid
- Question was whether a benefit had been established and not whether a right to claim had accrued
- Benefits payable on the occurrence of event and continue to grow
- Members rely on accumulated benefits when planning
- Benefit calculable at earlier time – not just upon occurrence of event

- Intolerable injustice if trustees reduce benefits on eve of payment
- Confirmed Adjudicator's lack of jurisdiction
- Minority judgment considered a benefit established if it is certain and secure
- Factual requirements to qualify for benefit
- Qualifications changed – but before he qualified
- Amendment did not reduce value of established benefit

- Section 12(4) deals with the registration of amendments
- Registered if not inconsistent with Pension Funds Act and financially sound
- Effective on date determined by fund or if no such date, from date of registration
- No legal force and effect until registered

- General interpretation that amendments can be registered with retrospective effect (SAPREF) case
- Practical assistance to funds to prepare financially

- Contractual terms vs delegated legislation
- Generally not permissible to extinguish accrued benefits
- Matter of balance as to whether rules can be amended retrospectively

- Cannot confer power on trustees contrary to present legislation
- Until registered, benefits paid under registered rules
- Ultra vires act by trustees
- Administrators cannot rely on instruction to pay
- Interest payable?