Pension Funds adjudicator finds EAAB CEO out of order

The Pension Funds adjudicator, Muvhango Lukhaimane, has slammed the CEO of the Estate Agency Affairs Board for disregarding the rules of a pension fund, saying that the CEO saw her role as allowing her to overrule the regulations of the fund by failing to register some employees as members and paying contributions on their behalf to the fund.

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Five employees of the Estate Agency Affairs Board (EAAB) have not contributed to the fund since July 2019.

No difference between employees

The complainant, specifically the board of directors of the EAAB, submitted that, in accordance with the rules of the fund, every employee employed on a permanent basis must be registered as a member of the fund.

However, it would appear that the CEO of EAAB chose not to adhere to the rules of the fund with regard to the affected employees.

The EAAB's board of directors averred that on 1 and 2 July 2019, the affected employees were appointed by the EAAB on a permanent basis.

In terms of their contracts of employment and the fund's rules, employees were obliged to contribute to the fund.

In her determination, Lukhaimane says the affected employees ought to have been regarded as eligible employees as there appeared to be no difference between the other employees and the affected employees, except for the fact that the latter raised an objection to membership of the fund due to affordability.

She says in terms of the rule 3.2 of the fund, it is compulsory for eligible employees to become members of the fund as a condition of employment.

Thus, the affected employees ought to have been registered as members of the fund when they commenced employment.

"The evidence indicated that the affected employees were not registered as members of the fund. Thus, the employer acted in contravention of rule 3.2 of the fund," says Lukhaimane.

It was also mandatory for the employer to deduct the required contributions from their salaries and to remit the same to the fund on their behalf.

Based on the submissions received, no contributions were remitted to the fund on behalf of the affected employees.

In contravention of the fund rules

"Thus, this Tribunal finds that the employer owes outstanding contributions in respect of the affected employees. The employer acted in contravention of the rules of the fund and section 13A of the Act. Therefore, the employer must be ordered to pay the outstanding contributions due to the fund on behalf of the affected employees.

"However, since contributions were not deducted from their salaries, it follows that only employer contributions are due to the fund," says Lukhaimane.

"The CEO's (and thus the employer's) lack of regard for compliance with the rules of the fund is of serious concern," she adds.

She further says: "It appears that the employer does not fully understand the binding force of the rules of the fund and the CEO perceives her role within [...] as including overriding the rules of the fund."

Ordered to pay

In addition, she adds that the affected employees were entitled to relief against the employer.

She ordered the employer to place the affected employees in the position they would have been had the employer timeously registered them as members of the fund and paid all pension-fund contributions due.

The fund was ordered to register the remainder of the affected employees as its members from 1 July 2019 when they joined the company.

The employer was ordered to submit all outstanding contribution schedules in respect of the remainder of the affected employees for the period July 2019 to date, to the fund.

The employer was also ordered to pay to the fund the arrear contributions plus late-payment interest.