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Transnet's Second Defined Benefit Fund and the concerns raised by the pensioners.

1. Introduction

Prior to 1990 Transnet had the Railways and harbours pension Fund for Black employees and the railways and Harbours Superannuation Fund for white employees. In 1990 these two funds were merged into the Transnet Pension Fund which was established under the Transnet Pension Fund Act of 1990 (Act 62 of 1990). Prior to the merger the two pension funds were controlled by the state and had an actuarial deficit of R17.1 billion.

The Transnet Pension Fund is a defined benefit fund which means that Transnet guarantees upfront the amount of the pension benefit that an employee receives on retirement.

2. The deficit

Following the merger Transnet's Board, the Board of Trustees of the Pension Fund and the fund actuaries agreed to settle the deficit in the following three ways;

- Transnet will pay R10.3 billion to the fund on 1 April 1990 (Note this commitment was made before the merger)
- Transnet promised to increase its contribution to the fund from 10% to 12.5% and further to 15.5% in the 1993/04 financial year.
- The rest of the deficit would be paid over 10 years.

None of these commitments were fulfilled.

3. Amendment of Transnet's Pension Fund

In 2000 the Transnet Pension Fund Act was amended in order to split the Transnet Pension Fund into three parts namely,

- Transnet Retirement Fund – this was for members who didn't want to become members of a defined benefit funds.
- Transnet Pension Fund – this was for workers who retired after 1 April 2000.
- Transnet Second Defined Benefit Fund – for all members who retired prior to 1 November 2000.

The Transnet Fund Amendment Act (Act 41 of 2000) made provision for a statutory increase amount of 2%. The concerned pensioners view this 2% statutory increase as a result of poor management of the fund in the past and that if the deficit was settled the increase would have been able to adjust to the inflation ratio.

4. Rules governing the Act and the 2% increase

The Rules set out in the Schedule (which make the 2% increase mandatory) may be amended by the Board of Trustees of the Transnet Second Defined Benefit Fund (TSDBF) with the approval of Transnet, provided that such an amendment is also approved by the relevant Minister with the concurrence of the Minister of Finance. Rule 9 (1) states that the Board of trustees may prescribe the manner in which the awards of benefits shall be considered by the fund (four of the six members of the Board of Trustees are appointed by Transnet). In this way a Parliamentary amendment of the Act could be avoided.

In May 2003, the Chairperson of the TSDBF Board of Trustees Mr Phillip Thompson wrote to the pensioners in response to their demand for a percentage increase in their pensions. He wrote: "**The Trustees wish to inform you that your annual 2% increase will continue to be paid as per rules of the Fund, however, due to 'a drastic drop in equity markets,' the Fund will not grant any increases, above the annual 2% in July this year. The Trustees do not foresee this situation improving in the foreseeable future."**

In November 2004, a Member of Parliament, the Honourable Mr I. Davidson asked the Minister of Public Enterprises if the Board of Trustees have amended the rules governing the fund for an increase. The Minister responded by saying, "**The Trustees have proposed in Draft Rule Amendments that a new pension increase policy be included to provide for increases that may exceed 2% subject to the affordability thereof to the fund. The Trustees are currently in the process of confirming exactly what this will be in consultation with the Transnet Board."**

5. Investments by the pension fund

5.1 MTN share

In 2000, the TSDBF held R4.8 billion of T011 bonds. In early 2001 Transnet proposed that the Trustees cancel the Fund's T011 bonds in return for a trust holding 75 million MTN shares. By January 2006 the MTN investment had realised R5 billion in cash for the TSDBF. Sadly though, pensioner entitlements were never affected by the T011 transaction. **These entitlements according to Transnet's then Chief Financial Officer, Mr Chris Wells are determined by the rules of the fund and not by the funding position of the fund. In his opinion pensioners of the TSDBF have received more than what was due to them in terms of the rules of the fund.**

In explaining this further, Mr Chris Wells said that the dividends of the MTN transaction accrued to Transnet (as the ultimate guarantor of the TSDBF) and that Transnet acknowledges the existence of a deficit and its responsibility is to manage that situation and to provide an appropriate solution.

5.2 The sale of the Waterfront

Transnet had a 26 percent shareholding in the V&A Waterfront and also **Transnet's Second Defined Pension Fund had 43.6 percent shareholding.** This also includes Transnet's pension fund which is also a **Defined Contribution Fund with a 7.8 percent shareholding**, as well as **Transnet's Retirement Fund also with a 22.6 percent**.

Transnet agreed to sell Cape Town's V&A Waterfront for R7.04 billion rand (cash) on 18 September 2006 as part of the entity's restructuring process to focus on logistics and rail. A consortium of British-based London & Regional Consortium, Dubai-based Istithmar and South African black investors won the bid to buy South Africa's prime real estate. The area bought by the consortium covers about 603, 859 square metres of development rights and the deal is said to be the biggest property deal in terms of value in South Africa's history. The likelihood is that pensioners' entitlement were once again not affected by the transaction as the rule stipulate only 2% increase annually.

6. Efforts made by the pensioners

The pensioners have used every avenue available to raise their concerns with the hope that the matter will be resolved and an amendment to increase the 2% is made. They've brought the matter before all the relevant role players namely, parliament, the ministry and Transnet without any success. Some of the role players approached by the pensioners include:

- Transport Minister, Mr Eli Louw (1989)
- Public Enterprises Minister, Dawie de Villiers (1994)
- Transnet CEO, Mr Saki Macozoma (1997)
- Minister Alec Erwin (2004)
- Finance Minister, Trevor Manuel (2004)
- Transnet's CEO, Maria Ramos (2005)
- Transnet's Chief Financial Officer, Chris Wells (2008)
- Public Enterprises Minister, Brigitte Mabandla (March, 2009)
- Public enterprises Minister, Barbara Hogan (September 2009)

In August 2005 Transnet released a statement that reads as follows: "Transnet acknowledges that a definitive solution to the issue now needs to be determined. **The matter is […] receiving the necessary and urgent attention of the management of Transnet, including the Chief Executive Officer, Maria Ramos and the Chief Financial Officer, Chris Wells. Transnet is committed to making meaningful progress on matters relating to the TSDBF within this calendar year (2005)."** It would seem that more promises were made and with little or no real solution to the matter, and to date the matter remains unresolved.

7. Conclusion

Transnet, the ultimate guarantor of the TSDBF seem to admit that the 2% percent annual increase stipulated by the rules governing the fund is not inflation adjusted and therefore does not help the plight of the TSDBF beneficiaries. The pensioners on the other hand feel truly aggrieved by this arrangement due to no fault of their own but that of the TSDBF Board of Trustees, particularly their poor past investments that are responsible for the deficit. Now that the matter is before Parliament, all the relevant stakeholders will need to be part of the solution seeking mechanism so as to put the matter at rest for it has dragged on for far too long.

7. Recommendation

The Board of Trustees of Transnet's Second Defined Benefit Fund, Transnet as well as the delegation representing the pensioners will need to appear before the committee to give clarity on the matter as well as the financial implications of the proposed amendment to the 2% statutory increase of the fund.
