

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

29 May 2008

STATUS: Immediate

EDCON PENSION FUND V THE FINANCIAL SERVICES BOARD OF APPEAL and another

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today dismissed an appeal against a judgment of the Pretoria High Court brought by the Edcon Pension Fund against the Financial Services Board of Appeal and the Deputy Registrar of Pensions.

Edcon Pension Fund had amending its rules with effect from a date before the Pension Fund Second Amendment Act came into operation. Thereafter it embarked on an exercise involving the restructuring and distribution of the surplus in the fund which entailed the transfer of members to provident funds. Transferring members were offered benefit enhancements funded out of the surplus but were required to renounce their employer post-retirement medical aid benefits. EDCON submitted the transfer applications after the Act had come into operation. As the applications did not comply with the provisions of the Act, they were rejected by the Deputy Registrar of Pension Funds and an appeal to the Financial Services Board of Appeal was dismissed. In the Pretoria High Court an application for the review of the decision was dismissed and it is against this judgment that the matter came on appeal.

The Appellant argued that it had acquired a right to have the matter dealt with in terms of the law prior to the enactment of this Act. The SCA rejected this argument and held that for a right to accrue all the conditions for its existence in relation to the benefit must be met, both in fact and in law all steps realistically required needed to taken. In the present case in view of the fact that the election by the members for whom transfer was sought in the application only occurred after the enactment of the legislation, and as this was found to be a condition which had to be met in order for the right in terms of s 14 of the Pension Fund Act 24 of 1956 to exist, no right could have

accrued. As the transfer application did not comply with the provisions of the Pension Fund Second Amendment Act the appeal against the judgment was dismissed.