

# A case report on Shortfall in Pension in a Dual Employment in Health and Rural University, South Africa

**B Meel**

*Professor, MBBS, MD, DOH (Wits), DHSM (Natal), MPhil HIV/AIDS Management (Stellenbosch), Research Associate, Faculty of Health Sciences, Nelson Mandela University, Port Elizabeth 6031 South Africa*

## Abstract

**Background:** Chances in dual employment are that an employee will be exploited by an employer not only in terms of salary, but also in terms of pension. The exploited an employee use to do double work, less salary and pension The question is, who will take responsibility if this happens? The primary health employer in dual employment must take responsibility for safeguarding an employee's pension in this case.

**Objective:** To describe and calculate pension in dual employment from 1996 to 2018.

**Results:** Mr BM was employed by the DOH in the government, where 5% of his salary was deducted from 1996 to 1999 to be paid into a public investment fund (GEPF). He was appointed as head of department (HOD) at the rural University in February 1996, but was kept on the payroll of the health, as he was working in the joint establishment. He was shifted from health to university payroll in 2001. This was only a shift of payroll, not the amount of work remained same before and after this. When Mr BM retired in September 2018, his pension was calculated from 2001, instead of 1996. His salary was also reduced by half by the second employer (university). This dual employment has complicated Mr BM salary as well pension and has described in this manuscript.

**Conclusion:** This double jeopardy of losses by first and second employer must be calculated so that the pension and salary can be paid appropriately from 1996 to 2018. It is primarily the responsibility of the Department of Health as a first entry point employer.

**Keywords:** *Dual employment, first and second employer, pension, health*

## Introduction

The retired person is live on pension. Pension is calculated at the time of retirement based on years of service and amount of salary received during his employment. An individual came to know his/her salary short fall in the terminal part of service. It is unfair that his claim of shortfall of salary is not entertained on the basis that he is no more employed. Salary is just like debt and could be claimed at any time. Secondly, the pension is based on salary so if the pension can claim, then the salary has to be accounted after an retirement.

Dual employment in the public sector presents more difficulties than in the private sector. This is because both employers are not taking responsibility of an employee. He became a football to get kick from both

sides without a referee. The question is who will take responsibility for paying an employee appropriately. In Mr BM case, the second employer (university), and they told that university pay as a university like it. Health is a government department. They handed to his appointed employee to second party (university), although they refund to second employer his 80% salary, and not to an employee directly. This became a problem as the second employer pay as they like it as first employer may not supervised properly and audited to second employer. This becomes even more difficult when the employee is not a native citizen of the country. Legal action is expensive, and few employees can afford to go to court. University authorities are not afraid of exploiting an employee, as they know that if there is compensation to be paid, it will be paid by the university, not by them

personally, an only after a long battle.

In a ground-breaking judgment, the Constitutional Court pointed out that such an employee needs greater protection, as he is vulnerable to exploitation.<sup>1</sup> Exploitation is more common in historically disadvantaged universities, as they were also got exploited by the apartheid regime. It has been seen that abused individual, become abuser when they come in power. These universities do not have any policy protocol in place. This is the reason after so many years of university opening; they have only few policy documents. Under dual employment, vulnerable employees must receive all possible protection.<sup>2</sup> In the absence of a policy protocol; these universities easily discriminate selectively against employees, as in the case of BM. The authorities do not want to develop a policy, since working without one allows them to abuse their power. A historic victory against labour brokers was celebrated by the South African Federation of Trade Unions (SAFTU) when the court dealt a deadly blow against labour brokers.<sup>3</sup> There is a need of such blow to university so that they will not exploit like Mr BM. The federation congratulated its affiliate, NUMSA, on the successful conclusion of its long court battle against labour brokers.<sup>4</sup> Mr BM needs a NUMSA at the university to deal with the unfair labour practice he suffered in dual employment.

The case revolves around the interpretation of a section of the Labour Relations Act (LRA) on the question of whether a worker was in the sole employment of the employer or in a dual employment relationship.<sup>4</sup> This case of Mr BM is unique and could create a history in the South African labour law. A few numbers of

professors were employed in the joint establishment but needed protection if they were to speak about their problems. Workers' rights must be protected, and the law must therefore be interpreted in the context of the right to fair labour practice.<sup>4</sup> Labour brokers will no longer have any legal standing in the employment terms of contract workers, nor be involved any further in the equation regarding the Labour Relations Act.<sup>4</sup> Unions must therefore vigilant to ensure that this historic ruling is rigorously enforced and that labour brokers cannot find any way through the back door to continue exploiting workers.<sup>2</sup> The purpose of this case report is to highlight the problem of unfair labour law practice at disadvantaged rural universities, especially in the context of dual employment, where an employee is sandwiched between two employers.

## Results

A deduction of 5% public investment commission and 7.5% pension contribution was made from 1993 to 2018. The pension was calculated from 2001 to 2018. Mr BM was a staff member of the joint establishment from 1996 to 2018, without any break. He was also acting HOD from 1996 to 2015. He was removed from the HOD position in April 2015 university but was still serving the hospital as HOD. His pension was doubly jeopardised. Firstly, his salary was not paid according to the University policy document since his appointment as acting HOD.

Secondly, Mr BM's public investment contribution was not included in his salary from 1996 to 2000. This led to a lower pension, almost half the amount he was supposed to get.

**Table 1. Deduction of public investment commission in health (later merged with GEPPF)**

Year	Public invest comm (5%) & pension fund contribution (7.5%)	Basic salary	Category	Status
1993	291.76 (5%)	7035.75	Health	Medical officer
1994	291.76 (5%)	7035.75	Health	Medical officer
1995	291.76 (5%)	7035.75	Health	Medical officer

**Cont... Table 1. Deduction of public investment commission in health (later merged with GEPF)**

1996	291.76 (5%)	9617	Joint establishment staff	Acting HOD
1997	291.76 (5%)	8911.75	Joint establishment staff	Acting HOD
1998	291.76 (5%)	9628.25	Joint establishment staff	Acting HOD
1999	291.76 (5%)	10105.75	Joint establishment staff	Acting HOD
2000	291.76 (5%)?	10611.00	Joint establishment staff	Acting HOD
2001	1012.21 (7.5%)	13496	Joint establishment staff	Acting HOD
2002	1012.21 (7.5%)	13496	Joint establishment staff	Acting HOD
2003	1222.03 (7.5%)	16293	Joint establishment staff	Acting HOD
2004	1222.03 (7.5%)	20226	Joint establishment staff	Acting HOD
2005	1606.86 (7.5%)	21358.17	Joint establishment staff	Acting HOD
2006	1931.12 (7.5%)	24415.58	Joint establishment staff	Acting HOD
2007	1941.77 (7.5%)	24415.58	Joint establishment staff	Acting HOD
2008	2087.40(7.5%)	27832.00	Joint establishment staff	Acting HOD
2009	2882.76 (7.5%)	38436.75	Joint establishment staff	Acting HOD
2010	4926.15 (7.5%)	65682.00	Joint establishment staff	Acting HOD
2011	4926.15 (7.5%)	65682.00	Joint establishment staff	Acting HOD
2012	4926.15 (7.5%)	65682.00	Joint establishment staff	Acting HOD
2013	4926.15 (7.5%)	65682.00	Joint establishment staff	Acting HOD
2014	4926.15 (7.5%)	72298.17	Joint establishment staff	Acting HOD
2015	5812.80(7.5%)	77504.00	Joint establishment staff	HOD in Hospital
2016	6219.69(7.5%)	88734.33	Joint establishment staff	HOD in Hospital
2017	6655.07(7.5%)	95211.92	Joint establishment staff	HOD in Hospital
2018	7140.89(7.5%)	100924.67	Joint establishment staff	HOD in Hospital

**Discussion**

Mr. MB retired, and he got one third of the total benefit in a cash lump sum and the other two-thirds is paid out in the form of a pension over the rest of the member’s life. A **provident fund member** can get the full benefit paid in a cash lump sum.<sup>5</sup>Little work has been carried out on the issue of dual employment in South Africa. This case of BM is probably unique in South Africa. It is consequently difficult to decide who is responsible for the shortfall in his salary and pension. If one regards the initial employer and bigger funder of

the salary of Mr BM as the responsible party, then the DOH is responsible. The DOH contributed about 80% of his salary. Secondly, who was the initiator to discipline him in a case of abscondment against him? Then again, a hospital manager of the DOH instructed the faculty head to institute disciplinary enquiries against BM. Therefore, the DOH seems to be the primary or first employer.

The Pension Funds Act, promulgated in 1956, codifies the second pillar of the retirement funding system. There have been a number of ad-hoc amendments to the Act and a number of commissions have assessed

retirement funding. These include the Mouton Commission (1992), Katz Commission (1995), Smith Commission (1995), National Retirement Consultative Forum (1997) and the Taylor Committee (2002). The National Treasury (2004) issued a discussion paper on retirement fund reform stating that the government seeks to build on the strengths of the established retirement funding environment, while progressively addressing its deficiencies.<sup>6</sup>

The problem and complexity of dual employment have been persisting for a long time. This is because hardly any employee understands this complex relationship and it was never cleared by the employers. The DOH and the university were using their employees as they wished under an agreement on a joint establishment. This agreement was signed by the DOH and university and according to it an employee of the DOH had to work at University. The University medical school was opened in the apartheid era as a form of resistance against apartheid practitioners. At that time there was a severe shortage of medically qualified staff to teach medical students, so they had an agreement about a joint establishment. This agreement continued and was revised in 2013 without much change, when the name of University was changed to X University except the DOH employee were recognised as HOD, and they were also having full advantage of joint establishment. An employee such as Mr BM, who retired after 23 years (1996-2018) of service on the staff of the joint establishment, deserves to get the back pay and pension of 23 years due to him. The university paid him almost half the salary to which he was entitled; therefore the pension automatically came down to half. HR calculated his pension from 2001, whereas he was appointed by the university in 1996 and his salary slips show the deduction of public investment funds, which were later, merged with the GEPF contribution. Now the question is who should pay Mr BM's pension for the period between 1996 and 2000? Mr BM was a staff member of the joint establishment and acted as HOD of a department.

The initial contract was signed for three years. The benefits due at its termination were not paid despite repeated requests. Eventually a letter was received from the DOH, stating that he was not entitled to transportation back to his place of recruitment at the end of the contract. Though Mr BM had completed

the three-year contract, he was not eligible for this benefit, which had not been specified in the agreement. Surprisingly several his colleagues received that benefit. Mr BM was a medical officer in the health in former government, and was a joint staff member of University as well. On joining University, the benefits of the DOH were transferred to University, such as unused leave credit. Therefore, the employment at hospital was not isolated from the appointment at University. Both (university and health) were work in hand in hand, share and transfer information to each other as an employee works in both sides. Mr BM was also appointed as acting HOD while he was a medical officer in hospital, so his accountability is on both side but only paid by the hospital. Therefore, the argument of the head is not convincing, and any unpaid money is supposed to be paid by the DOH. Additional to the fixed establishment, whether by reason of the absence of the incumbent of any post, or when it is necessary to provide staff for the performance of a class of work for which staff is not ordinarily employed on a permanent basis, or when it is necessary for any other reason to increase temporarily the staff of any department.<sup>7</sup>

The main problem experienced by the joint staff of Faculty developed after the implementation of the Occupation-Specific Dispensation (OSD) in 2009. The OSD scale revised every and paid by the National Government of Health through Provincial Health Department. The health paid to University, but university and did not pay to an employee. The university staff discriminated against the staff of the health, and this led to many staff members joining the health and leaving the university payroll. This move was discriminatory and selective. Mr BM retired in September 2018, and his pension as calculated was almost half of what he was entitled to. This led to serious disappointment. Pension depends upon two main factors, namely length of service and salary scale. In Mr BM's case, both were reduced. At least one employer must give protection in dual employment. Mr BM was exploited by both. He was working as a full-time employee bearing responsibility at both the hospital and the university, but in the end, he received a lower pension in his old age to live on difficult time without any funds.

The GEPF is correct in saying that payment of actuarial interest as a benefit on the exit of a member from

GEPF, consistent with the payment of minimum benefit in funds governed by the Pension Fund Act, is intended to be broadly the amount held by the GEPF on behalf of the member. Payment of a lesser amount would result in a profit to the GEPF and could be considered unfair to the member. Payment of a higher amount would result in a loss to the GEPF and might be considered enrichment to the member.<sup>8</sup>

### Conclusion

Dual employment has had a complicated and seriously affected the life, both in terms of pension and morale of a retired individual. Pension is a pride of retired man. Pension is linked to the salary, and if salary paid half then the pension is also reduced to half. The estimation of pension will be carried out by an actuarial consultant once it becomes clear that the health must accept this responsibility.

**Ethical Issue:** Proper care was taken in this manuscript, as not to disclose directly to any institution or an individual, but if is knowingly or unknowingly someone find it, and then it is not author intention. It is failure of system in both health and university, and that led to victimization of Mr. BM. The author would like to high light this system failure in this report, not an individual or institution.

**Conflict of Interest:** None

**Funding:** Self-funded

### References

1. Cachalia M. Groundbreaking judgment of a constitutional court, 2018. <https://www.golegal.co.za> (Accessed 12.01.2020).
2. Smit S. A make-or-break case for the labour-broking sector reaches top court. <http://mg.za/article/2018-02-20-a-make-or-break-case-the-labour-broking-sector-reaches-to-top-court> (Accessed 12.02.2020).
3. Politics web. Historic court victory against labour brokers celebrated-SAFTU.<http://politicsweb.co.za/historic-court-victory-against-labour-brokers> (Accessed 12.01.2020).
4. Craven P. Issued by SAFTU acting spokesperson, 2018. SAFTU.<http://politicsweb.co.za/historic-court-victory-against-labour-brokers> (Accessed 12.01.2020).
5. The South African Labour Guide.<https://www.labourguide.co.za/general/499-pension-and-provident-funds> (Accessed 01.02.2020).
6. George DT. Analysis of South African Pension fund conversions: 1980-2006. <http://uir.unisa.ac.za/bitstream/handle/10500/2474/thesis.pdf;jsessionid=BCDA9FAAEFA41D18011095ACBA23C2F4?sequence=1> (Accessed 01.02.2020).
7. Public Service Act of South Africa, 1994. Proclamation 103 published in *Government Gazette* 15791 of 3 June 1994.
8. Solidarity Union. In the high court of South Africa Gauteng Division, Pretoria.<http://www.saflii.org/za/cases/ZAGPPHC/2017/1307.html> (Accessed 01.02.2020).