

**CHALLENGES OF POST-APARTHEID STATE-OWNED COMPANY
PENSION FUND REFORM: A CASE STUDY OF THE CONTROVERSY
AROUND THE TRANSNET-TRANSPORT PENSION FUND**

By

NOLUYOLO JULIET GOQOZA

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ABSTRACT

This thesis examines the restructuring of the pension funds of Transnet, a South African state-owned company involved in transportation, from the 1990s. Two of its main pension funds, the Transport-Transnet Pension sub-Fund (TTPF) and the Transnet Second Defined Benefit Fund (TSDBF), have been surrounded by controversy, with major court actions brought by aggrieved pensioners in 2006-2012 and again from 2013, and smaller cases in 1997-1999 and 2004. (There were also a number of smaller cases, mostly unsuccessful, but the thesis will not examine them). The case that started in 2013 is the biggest class action in the country's history, and makes claims of serious mismanagement and bad faith against the Transnet management. But the fundamental grievance is that (according to the 2013 legal case) "more than 80% of pensioners earn less than R4 000.00 a month... 62 % earn less than R2 500.00... 45% of the pensioners earn less than the state's ordinary old-age pension" grant for the poor.

Although that case is ongoing, this thesis examines the background and controversies that frame the case. It provides an overview of the history and development of the South African pensions system and South African state-owned companies; it examines how these have been shaped by the apartheid and post-apartheid periods, and by the rise of neo-liberalism; it examines the evolution of Transnet and its pensions systems, from the early days of the South African Railways and Harbours Administration (SAR&H, formed 1910), to its restructuring into the South African Transport Services (SATS) in 1982, and then into Transnet in 1990.

The thesis shows that the operations of the TTPF and TSDBF, which are closed to new members, have had serious effects on pensioners that rely upon them. Pensions are very low (the main reason for the various court cases), and this is for a range of reasons. Annual increases in pensions are formally set at below-inflation levels, leading to falling real incomes. More pressure on pensioners' livelihoods has arisen from Transnet's cuts to other benefits, like the medical aid Transmed, provided to pensioners. While the schemes are solvent, the pensions generally started at a low base, partly because most pensioners were relatively poorly paid workers before retirement (and the pensions were linked to former salaries). There is also a racial dimension: while most white workers at SAR&H/ SATS and Transnet were poorly

paid, black, Coloured and Indian workers were paid even worse, and, further, were only brought into the pension schemes late.

Both TTPF and TSDBF are defined benefit funds, which means members are guaranteed specific benefits at retirement, with the employer obligated to inject funds to meet shortfalls where needed. Yet neither the state nor Transnet has been willing to take actions to lift the basic pensions, such as investments into the funds, or to make systematic *ex gratia* payments to bring the pensions to a reasonable level, to remove historic racial inequalities between pensioners, to increase medical aid co-payments or coverage or to otherwise address the pensioners' situation.

It does not seem that the reason for the problems is that the two funds have been severely mismanaged or asset-stripped, as alleged in the 2013 class action: it must be noted that both funds report surpluses. But the surpluses are possible because the pensions are low and falling in real terms, and the numbers of pensioners declining due to deaths. It seems clear that Transnet is unable or unwilling to act to decisively improve the situation of the pensioners: ensuring a surplus on existing pension funds is a major goal. This is partly because Transnet itself has ongoing financial problems, and partly because it operates in the context of neo-liberal restructuring, like corporatisation, commercialisation and privatisation, which places limits on the additional funding of the funds. At the same time, the pensioners have very little real, as opposed to a nominal, say in the administration of the pension schemes, limiting their ability to affect the rules and administration or raise issues.

The thesis seeks to use historical institutionalism, which sees policies and major institutions, including state-owned companies, as shaped by power and conflict, especially between classes. This is used to try and explain changing state policies and the changing role and actions of state-owned companies, as a way of understanding Transnet's actions, as well as its treatment of its pensioners.

DEDICATION

This thesis is dedicated to the one man who has always made his presence known.

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ACROYNMS

ANC	African National Congress
ASGISA	Accelerated and Shared Growth Initiative-South Africa
BEE	Black Economic Empowerment
BR	British Railways
COSATU	Congress of South African Trade Unions
DA	Democratic Alliance
DPE	Department of Public Enterprises
ESKOM	Electricity Supply Commission
FEDUSA	Federation of Unions of South Africa
FF	Fully Funded
FF +	Freedom Front Plus
GDP	Gross Domestic Product
GEAR	Growth Employment and Redistribution
GEPF	Government Employment Pension Fund
IDC	Industrial Development Corporation
IMF	International Monetary Fund
ISCOR	Iron and Steel Industrial Corporation
N.I.E	New Institutional Economic
NP	National Party
PAYG	Pay-As-You-Go

RDP	Reconstruction and Development Programme
SAA	South African Airways
SACP	South African Communist Party
SAR & H	South African Railways and Harbour Administration
SASOL	South African Coal, Oil and Gas Corporation
SATS	South African Transport Services
SOEKOR	Southern Oil Exploration Corporation
TPAG	Transnet Pensioners Action Group
TPF	Transnet Pension Fund
TTPF	Transport-Transnet Pension sub-Fund
TSDBF	Transnet Second Defined Benefit Fund
TRF	Transnet Retirement Fund
WTO	World Trade Organization

TABLE OF CONTENTS

Abstract	ii
Dedication	iii
Acknowledgements	iv
Acronyms	v-vi
Chapter 1: Introduction	
1.1. Introduction	11
1.2. Context	14
1.3. Theoretical Framework	15
1.4. Goals of the Research	17
1.5 Research Methodology	18
1.6. Challenges Encountered in the Field	20
1.7 Outline of the Chapters	20
Chapter 2: Background: State-Owned Enterprises and the Rise of Transnet	
2.1. Introduction	23
2.2. New Institutional Economic Theory and Rational-Choice Institutionalism	23
2.3. From Rational-Choice Institutionalism to Historical Institutionalism	24

2.4. Background to State-Owned Enterprises in South Africa.....	27
2.5. Race and the State-Owned Companies.....	28
2.6. From SAR&H to Transnet.....	31
2.7. The ANC and the Continuation of Neo-liberalism.....	37
2.8. Black Economic Empowerment (BEE) and State Asset Restructuring.....	39
2.9. Conclusion.....	40

Chapter 3: Background: The Literature on Pension Schemes

3.1. Introduction.....	41
3.2. Types of Pensions	41
3.3. Pensions and the Larger South African Welfare System.....	45
3.4. The General History of Pensions in South Africa.....	47
3.5. Post-Apartheid Pensions Reforms.....	52
3.6. Conclusion.....	54

Chapter 4: Transnet Operations and Pensions Restructuring from the 1990s

4.1. Introduction.....	55
4.2. Neo-Liberal Restructuring at Transnet from the 1990s.....	55
4.3. Pension Restructuring at Transnet from the 1990s.....	60
4.4. Core Challenges facing the Transnet Pensions.....	63
4.5. Conclusion.....	65

Chapter 5: The Pensioners' Claims against Transnet, and Transnet's Replies

5.1. Introduction.....	67
5.2. The Situation of Transnet Pensioners.....	68

5.3. Earlier Successful Pensioner Cases against Transnet.....	70
5.4. The Current Case: Grievances, Explanations and Claim.....	71
5.5. More Details on the Pensioners' Claims.....	75
5.6. Power and the Annual Pension Increase Policy of Transnet.....	76
5.7. Controversy around the V&A Sale and the T011 Bond Swap.....	80
5.8. Transnet's Response on the Financial Status of the TTPF and the TSDBF.....	82
5.9. Transnet's Position on the Relationship between Transnet and the Pension Funds.....	84
5.10. Transnet's Position on the Issue of the Annual Pension Increase Policy of Transnet.....	85
5.11. Transnet's Rejection of the Legitimacy of the Class Action Case.....	87
5.12. Conclusion.....	89
Chapter 6: Final Evaluation of the Contending Views, and Conclusions	
6.1. Introduction.....	92
6.2. The Issue of the Race of the Pensioners.....	92
6.3. The Issue of the Income Levels and Living Conditions of the Pensioners... 	94
6.4. The Issue of How Pensioners are Represented in the Pension Funds Management.....	97
6.5. The Issue of Whether the Pension Funds are Mismanaged.....	98
6.6. The Left-out Issue of the Role of Neo-liberalism.....	100
6.7. Using Historical Institutionalism to Explain the Situation of the Pensioners.....	102

6.8 Conclusion.....103

Bibliography.....105-115

Appendices

Appendix A: Interview Question for Advocate Alberts.....116-117

Appendix B: Interview Questions for Transnet.....118-122

CHAPTER 1:

INTRODUCTION

1.1 Introduction

This thesis examines the restructuring of post-apartheid state-owned company pension schemes, with a focus on the Transnet's pension funds, specifically its Transport-Transnet Pension Sub-Fund (TTPF) and its Transnet Second Defined Benefit Fund (TSDBF). It investigates the challenges with these two Transnet pensions. It has been widely reported that, when Transnet inherited the pension funds from its immediate predecessor the South African Transport Services (SATS), it also inherited a deficit of R17.2 billion (Salanje, 2002; Pensioners Affidavit, 2013). A pension fund is, in a sense, an “intergenerational exchange” between current and former workers (Gora, 2013:4).

Media has also reported that pensioners have made claims against Transnet for failing to honour its obligations, leading them to become seriously impoverished. From 2006-2012, Transnet was taken to court by pensioners who belonged to the TTPF. There were also smaller cases in 1997-1999 and 2004. In 2013, pensioners in the Transnet Pension Action Group (TPAG) launched a class action regarding both TTPF and the TSDBF. This second case was instituted by two applicants, and sought compensation of R85 billion for Transnet allegedly going back on SATS' commitments, and for also failing to adjust pension payments to match inflation. (There is a third pension fund, the Transnet Retirement Fund, but it is not the focus of the research, and little will be said of it. When the TTPF and TSDBF are discussed together, they will be mentioned as “the funds” or “the Transnet funds”).

This is the largest class action suit in South Africa history, and the case essentially suggests that Transnet had asset-stripped the pension funds (de Langes, 2014). Since pensioners are dependent on their pensions, and since company pensions are

contributory, any problems in pension funds, real or not, are naturally viewed with great misgivings and emotion. The controversy around the Transnet pension funds has also been given some political charge, because it has been raised repeatedly by the Afrikaner nationalist Freedom Front-Plus (FF+); many of the pensioners are white, and the current Transnet management black (see e.g. the Transnet response to City Press: Sigonyela, 2014). Transnet has denied the claims and allegations made against them and asserted that the Transport Pension Fund has always been able to pay the pensioners their benefits, and remains solvent and well-managed. The pensions are certainly low: according to Benwell (2010), in 2008 whilst an average pension per month was R2800.00, others received as little as R219.00 per month “almost 40% of the pensioners receiving a pension income that was less than a state social pension of R1080.00”. One estimate states that “more than 80% of pensioners earn less than R4 000.00 a month...62 % earn less than R2 500.00... 45% of the pensioners earn less than the state’s ordinary old-age pension” for the poor (Geysers and Coetzee, 2013).

With the current case ongoing, many more details will be revealed; however, some material is being made unavailable, as it could affect the case. This thesis will not deal with the details of the current case. Rather, it will examine how the Transnet pensions have been restructured, and look at some of the effects of those changes. This will evidently touch on issues relevant to the case, but this research is not linked to any party in the case, and it makes use of information provided by both parties. It does not examine how the pensioners mobilised, either; it deals with the pensioners, not as a social movement (which would make an interesting study), but as people affected by low pensions, part of the larger backdrop to the current case.

In short, this thesis examines the challenges faced by pension fund reform in the state sector, which is part of the larger process of state asset restructuring. It is important to note here that these reforms have been shaped, both by efforts to remove apartheid inequalities (for example, segregated pension and wage systems in state companies), and to restructure state assets in line with neo-liberal models stressing cost-cutting, competitiveness and deregulation.

Transnet is a “bulk freight and logistics” state-owned company that is wholly-owned by the South African government, and incorporated in terms of the company laws in

the Republic of South Africa “pursuant to the Legal Succession to the South African Transport Services Act, 1989 (Act no.13 of 1989)”(NERSA, 2013:11). This company currently comprises five subsidiaries: Transnet Freight Rail (TFR, formerly known as Spoornet), Transnet Rail Engineering (formerly known as Transwerk). Transnet National Ports Authority, Transnet Port Terminals (formerly known as SAPO- South African Port Operations) and Transnet Pipelines (formerly known as Portnet) (Transnet Integrated Annual Report, 2011:27). Until 2006, Transnet also included the state-owned passenger airline, South African Airways (SAA), and urban rail service Metrorail. Today it remains central to rail and sea transport. Transnet Freight Rail is focused on transporting long-distance “bulk and containerised freight” (Transnet Integrated Annual Report, 2011:27). This state company’s main focus is exporting, with “coal line, iron ore line and ... General Freight business” (Transnet Integrated Annual Report, 2011:27).

Transnet Rail Engineering is made up of eight business units at Transnet that upgrade, improve, change and manufacture rail rolling stock (Transnet Integrated Annual Report, 2011:27). The safety and effective functioning of the national ports system is the responsibility of the Transnet National Ports Authority, which manages the ports in a landlord capacity (Transnet Integrated Annual Report, 2011:27). Port infrastructure and marine services at “all marine commercial ports in South Africa” are provided for by this business unit. Transnet Port Terminals provides “cargo handling services for the container, bulk, automotive and break-bulk sectors as it owns 16 cargo terminals operations situated across seven South African ports” (Transnet Integrated Annual Report, 2011:27). Lastly, Transnet has a subsidiary division named Transnet Pipelines, which transports a “range of petroleum products and gas through 3000 kilometres of underground pipelines, and these underground pipelines travel through five provinces” (Transnet Integrated Annual Report, 2011:27). Essentially, this operation is the key way of moving petroleum fuels around the country for urban commuters.

Transnet is the biggest single South African state-owned company; it currently employs a total number of 54 671 permanent workers and 8 893 contractors (Transnet Integrated Annual Report, 2014:6). This also places it amongst the biggest employers in the country, with almost double as many workers as the Lonmin mining company at 28 000 (Lonmin, n.d.). Restructured in various ways since the 1980s (see

e.g. Barrett, 2005; Greenberg, 2006; von Holdt, 2005), Transnet has been subject to both legal challenges by former employees, and ongoing union-based struggles by current employees.

1.2 Context of the research

According to Greenberg (2006:6), prior to the formation of the Union of South Africa in 1910, integrated railways systems were mainly used to “serve the mines”. From the beginning, railways were in state hands, and when Union merged several colonies and republics into one state, different state railways were combined into a single South African Railways and Harbours (SAR&H). The railways have since played an important role in providing basic infrastructure, integrating the country, and providing sheltered employment for poor (white) people (Greenberg, 2006:6). It should be noted that the wages for white workers on the railways were often relatively low, but generally better than those of blacks, Coloureds and Indians.

In 1982, SAR&H was reformed as SATS (Greenberg, 2006:6). This was part of a larger restructuring of state assets by the then-apartheid government under the National Party (NP). In 1988 an announcement was made by the then-President, P.W. Botha, in parliament, that SATS would be commercialised as it could not meet current requirements (South African Transport Services, 1989:3). SATS was struggling with road freight competition, but the decision to commercialise was also made so to reduce financial pressure on the state. In the longer run, SATS was set for privatisation, with some assets sold in the late 1980s (CRIC, 1989B), although most privatisation was put on hold. The apartheid state was then facing severe economic and social challenges, and, along with limited and industrial relations political reforms, also moving towards what are now called neo-liberal policies (see CRIC, 1989A; Hentz, 2000:203).

At the time of the creation and restructuring of SATS, there were already SAR&H pensioners. Any doubts they had about the future were laid to rest by the SATS management, which set out to convince pensioners that the ongoing changes would be for the benefit of all, with no negative impact on the pensioners and their livelihood. In 1990, the now-commercialised SATS, which had been divided into a

number of “business units” (CRIC, 1989B), was changed to Transnet (Pensioners Affidavit, 2013).

When Transnet took over the reins from SATS, it not only inherited its assets and liabilities, it also inherited its obligations towards its pensioners (Pensioners Affidavit, 2013), including those SATS carried over from SAR&H. The commercialisation of Transnet continued post-apartheid, under the now-ruling African National Congress (ANC), and there were new efforts at privatisation in the late 1990s (e.g. Radebe, 1999). These efforts led to major resistance by unions, which managed to win, on paper, the adoption of an alternative restructuring plan in Spoornet/ Transnet Freight Rail (see e.g. Barrett, 2005; von Holdt, 2005).

1.3 Theoretical Framework

The theoretical framework that underpins the study will be that of historical institutionalism, in the sense of an approach to understanding the actions of major institutions. This is discussed in more detail in chapter 2, but here is a short introduction. Unlike “rational choice” types of institutionalism, like New Institutional Economics, historical institutionalism argues that the history and resources of institutions embedded in specific class systems and state forms shape what policies are adopted and how they are implemented (e.g. Reuschmeyer and Evans, 1985).

For example, Katherine Sikkink (1991) argued that policy choices and outcomes were shaped by the state form and the class structure, including the balance of power in society, and divisions and factions in classes and the state. Peter Evans (1989) argued that the different development outcomes of states adopting import-substitution-industrialisation depended on the context in which the policy was “embedded”. Basically, policy implementation varied massively, and this was due to the features of the national state, and those features depended both on how state formation took place, and the specific class structure and struggles, in which the state existed, and divisions within classes and the state. This shaped what policy was adopted and how it was actually implemented.

In New Institutional Economics and other rational-choice institutionalisms, institutions are rules and norms that structure behaviour, including of organisations

(Hall and Taylor, 1996:10). Within these institutional frameworks, organisations are seen as arising from the actions of rational individual actors, who aim to act in ways that are maximising (Hall and Taylor, 1996:10). Institutions are created to reduce transaction costs, or to reduce uncertainty, or benefit individuals. Then the institutions constrain the actors, since they set rules, but the rules have the benefit of allowing planning and prediction (Hall and Taylor, 1996:10).

This is very different to historical institutionalism, which includes as “institutions” not just rules and norms but also various formal organisations. The rules and norms and formal organisations are shaped by a variety of actors, with unequal power, and arising in very different historical contexts. Large organisations, as institutions will have built-in imperatives (for example, a private firm must make profit), and logics (for example, a bureaucratic state operates in a specific way), but these also arise from history and society (see Evans, 1989). There is no one set of “rational” behaviours, or one way correct or given way of operating, or one type of individual (like “homo economicus”). Institutions matter, but they are shaped by large-scale relations of power and conflicts. So, which ideas get taken up depends on the power and conflicts, and how the ideas are used in practice also depends on the power and conflicts (Sikkink, 1991).

For example, the behaviour of SAR&H, then SATS, then Transnet was definitely shaped by these conflicts and divisions. There was no period where the affected individuals jointly created SAR&H as a voluntary solution to problems. The institution was created by the state, and run in particular ways at particular times, due to particular conflicts in society. For instance, planned privatisation in the 1980s was shaped by crises, and changes in economic policy, but then it was halted in the late 1980s / early 1990s, and again in the late 1990s / early 2000s, by massive resistance by labour, which was able to use splits in the Transnet management (and in the ANC government) between different blocs with different agendas, to push through what was meant to be a more pro-labour model of restructuring (see e.g. Barrett, 2005; von Holdt, 2005).

It seems like SATS/ Transnet plans for privatising in the late 1980s/ early 1990s did not even take black unions into account (see e.g. CRIC 1989B). But black unions were fighting a bloody battle to get recognised on the railways in the late 1980s (see

Baskin, 1991), and were making breakthroughs. By the early 1990s, they were often linked through the Congress of South African Trade Unions (COSATU) to the now-legal ANC, and the NP faced too much pressure to privatise Transnet. By the mid-1990s, black unions had grown massively in the state sector, and were entrenched firmly on the railways and elsewhere, and were allied for the most part to the now-ruling ANC (see von Holdt, 2005; von Holdt, 2010). And this meant they had a huge impact on how state facilities and the ANC operated. They did not have control, but they could block or delay management decisions, and push management to take them seriously e.g. signing alternative restructuring models, as happened to Spoornet/TFR.

Historical institutionalism better explains how the state in post-apartheid South Africa have acted, because it asserts that between these players or actors there is a matrix of power that structures conflict, in which some groups push forward their interests while aiming at “demobilizing others” (Hall and Taylor,1996:6). Therefore historical institutionalism seems an appropriate theory for the study of the institutions, because it does not only incorporate institutions when looking at study of economic policies, but it studies the institutions by looking at the reasons as to how they develop, operate and change. This theory is an important tool for understanding change within an institution such as Transnet and its pension’s schemes, and the controversy around the TTPF and the TSDBF.

1.4 Goals of the research

The key objective of this research is to examine the crisis and the controversy around the TTPF and the TSDBF. This entails analysing the historical background of Transnet and the liabilities it inherited; the legislation that created and governs the funds; as well as the decisions taken by both Transnet and the Trustees of the funds that have led to the institution of a class action by the pensioners.

In order to explore the key objective of this research, the following secondary objectives are pursued:

1. To analyse the decisions that were taken by both Transnet and the trustees of the funds with regards to Transnet pension funds.

2. To discuss the policies and legislation put in place for the restructuring of state-owned companies and pension reforms.
3. To examine the restructuring of Transnet as well as the impact of the company's restructuring on their pension funds.
4. To investigate the restructuring of these pension funds, how they are funded and why they are a source of stress to the pensioners.
5. To investigate the impact the swapping of the T011 bonds stock for the M-Cell shares has had on the Transnet pension funds.
6. To explore the impact of post-apartheid restructuring on state-owned company pension schemes.
7. To analyse the annual reports of both Transnet and the TTPF and the TSDBF.
8. To explore the impact of past policies on the current economic situation of the TTPF and the TSDBF.
9. To assess the perceptions of both Transnet and the pensioners on the challenges with the pension funds, by a case study of the class action against the TTPF and the TSDBF.

1.5 Research Methodology

The study is research-based: Neuman (2003:2) defines the process whereby the researcher learns and acquires new information as being that of social research. According to Terreblanche and Durrheim (1999:29), research methodology directs how research should be implemented, and this is manifested in the research design. The research design is really the research plan (Babbi and Mouton 2001). The research design is shaped by several considerations, but it is always shaped by the question that the researcher seeks to answer. It is the plan that is put in place to obtain the required information.

This thesis relies on qualitative research methods, which allows for human behaviour to be studied in detail, this obtaining the in-depth information that an institutionalist approach requires, and being suitable because the study requires information from key informants (and primary documents), rather than survey-type information. It allows the researcher to obtain large amounts of detailed information to analyse (McNeil and Chapman: 2005). This is important because the controversy around the TTPF and the TSDBF cannot be fully understood without having an understanding

of the deeper roots of the issues, and this sort of depth cannot be obtained through quantitative methods.

Three methods were used. Using several methods allowed information to be cross-checked, and also allowed access to a far wider range of data than would have been available through any one method. The topic also merited the use of a range of sources, since it was a complex one that required access to key players, policies and documents. The first was that of in-depth, semi-structured, interviews. Semi-structured interviews were conducted with several key informants, who were selected based on their important role they played in the controversy around the TTPF and the TSDBF. The selected informants were:

- Advocate Anton Alberts, who is a Member of Parliament (MP) for the FF+, and who was instrumental in pensioners filling the recent class action in 2013.
- Mr Brian Molefe, the Chief Executive Officer (CEO) of Transnet.
- Mr Anoj Singh, the Chief Financial Officer (CFO) at Transnet.

It was not possible to interview Advocate Alberts in person, but an interview was undertaken by email. Face-to-face interviews were done with CEO Molefe and CFO Singh. In all cases, follow-up exchanges were undertaken by email. Second, it also proved possible to have a focus group with senior Transnet management. When the researcher visited Johannesburg to interview CEO Molefe, she was later introduced to the CFO Mr Singh as well as to the Group Manager of Group Taxation, Ms Helen Walsh, who had submitted an affidavit on behalf of Transnet to the court of law. A discussion took place between all four of us, which enabled dialogue and raised areas of interest that might have been overlooked in a one-on-one interview.

Third, extensive use was also made of primary documents. Through the assistance of the Transnet managers that the researcher met, she was given access to the financial statements and the affidavits of all the parties involved in the class action. Further use was made of primary documents that were already publicly available. These included documents like Transnet and government reports and statements, news reports, and legal documents (obtained from the Transnet lawyers, who sent the

documents to the researcher). It also involved examining the Transnet Second Defined Benefit Fund Rules, SATS materials, the Regulations of South African Transport Services New Superannuation Fund; the Legal Succession to the South African Transport Services Act no. 9 of 1989 and the Transnet Pension Fund Act 62 of 1990.

Interviews were recorded, and the information was then transcribed and coded according to themes, to enable analysis. The same coding was done with primary documents. Coding helped make the vast amount of material manageable. Where needed, the researcher asked follow-up questions of the interviewees, to clarify issues.

In terms of research ethics, the researcher provided an official letter from Sociology, at Rhodes University, clearly stating her intentions for interviews and obtaining documents that were not publicly available. E-mail exchanges were also begun with a clear statement of intent. This way, the respondents were fully aware of the topic, and of the key objectives the thesis wanted to cover, before they participated. The interests and the concerns of the respondents that were taking part in the research were put into consideration, when the study was conducted. The researcher made sure to inform respondents that, if at any time they wished, they could withdraw. Since these parties each had different things to say about each other, and different allegations made about the other side, I tried to remain objective throughout, and not take sides. It was difficult at times but I tried specifically to keep my emotions out of the situation.

1.6 Challenges Encountered in the Research

Experiencing challenges when conducting a research is to be expected, but it is not something that one wishes to experience. The class action process moved very rapidly after the research began, and this made it difficult to set up interviews. Initially, the study did not want to deal with the rights and wrongs of the case: it was meant to be a study of the Transnet Pension Action Group (TPAG) pensioners' movement around the pensions, as a social movement: How did such a group mobilise? What did it do, and why? It seems to have started in KwaZulu Natal province (De Lange, 2013), but was later reported to be active in the Vaal region (Fitchat, 2013). How had this happened? Although there is a literature on pensioners'

movements in other countries, there is nothing written on these in South Africa, and nothing on the TPAG (besides some short newspaper reports).

But with the case suddenly looming, the pensioners' TPAG group became completely unavailable. Due to the sensitivity of the case, it declined to be involved because of fear that the thesis might be harmful to their case in court. They stated that they were legally advised against being involved with the research. Because the issue was *sub judice* their lawyers advised them not to speak with anyone to avoid being compromised. Communication broke down, and the lawyers also never replied to any of my requests. It proved necessary to change the focus, while keeping the topic, of the controversy around the TTPF and the TSDBF. It also proved necessary to move away from social movement theory, and towards institutionalism. The research was changed to focus on the policies and decisions that played a role in shaping the TTPF and the TSDBF and their operations. Since these issues were themselves controversial, it was necessary to look at Transnet, the shaping and evolution of the funds, and the decisions that were taken that led to the current situation of the funds, the low pension levels, and the class action.

Even with the new focus, the impending court case haunted the research. Advocate Alberts of the FF+ kindly helped me with information that I needed, and securing an initial interview with CEO Molefe was also surprisingly easy. When we met, Molefe introduced me to CFO Singh. Both were keen to help, and committed to ensuring large-scale access to Transnet officials and documents, and to facilitate access. However, Transnet's legal team intervened, and imposed a much stricter access protocol. Many documents were now presented as confidential, and even an offer to embargo the research during the case was not enough to reassure Transnet, which worried that documents might end up in the wrong hands. Nonetheless, it must be noted that Transnet did provide a number of documents that were essential to the study, as well as access to CFO Molefe and CFO Singh. Their documents helped make the study possible. However, trade unions at Transnet, which play an important role in the pensions system, generally declined involvement, despite expressing some initial interest.

1.7 Outline of the Chapters

Chapter 2 discusses the nature of state-owned companies, in two ways. First, it goes into more depth regarding the theoretical framework, examining different approaches to understanding state institutions: rational-choice institutionalism versus historical institutionalism. Next, the chapter looks at the state-owned companies, and their history in South Africa. It examines the development of SAR&H, SATS and Transnet, and the problems the entity faced by the 1990s, by which time it was undergoing neo-liberal restructuring, with a variety of controversial consequences, plus the onset of Black Economic Empowerment (BEE) objectives post-apartheid.

Chapter 3 discusses the history of pension funds in South Africa, explaining the different systems, and placing this alongside the larger state welfare system. It looks at these funds, and at welfare, in the pre-1994 and post-1994 periods, and discusses the development of pensions in the railways and elsewhere. Chapter 4 looks more closely at how Transnet has been restructured since the 1990s, and how the Transnet pension schemes have changed in this time. Chapters 3-4 all try to make some use of historical institutionalism. Chapter 5 examines the controversies around the Transnet pensions (specifically the TTPF and the TSDBF), giving the positions of both the pensioners and Transnet. It tries to evaluate the different positions, and draw some conclusions. The final chapter, chapter 6, brings the issues together, summarizing the findings of the research, and making a general assessment of the controversy.

CHAPTER TWO

BACKGROUND: STATE OWNED ENTERPRISES AND THE RISE OF TRANSNET

2.1 Introduction

This chapter provides a basis for understanding state-owned enterprises, including state-owned companies in South Africa. The first part outlines the theoretical framework, examining two different approaches to understanding state institutions: rational-choice institutionalism and historical institutionalism. It evaluates the two, and argues in favour of historical institutionalism. According to the historical institutionalism, institutions are contested and as shaped, in their policies and operations, by relations of power, and by conflicts. The second part looks at state-owned companies and their history in South Africa. This includes an examination of SAR&H/ SATS/ Transnet, and its situation by the 1990s, including efforts at neo-liberal restructuring. The next chapter focuses on pension funds.

2.2 New Institutional Economic Theory and Rational-Choice Institutionalism

Within the study of institutions, two main contending approaches can be identified, which are “rational choice” institutionalism, of which the main example is New Institutional Economics, and historical institutionalism. Effectively, New Institutional Economics uses the models developed in mainstream (neo-classical) economics to analyse institutions (e.g. North, 1993: 97). It focuses on “how institutions develop, function, their purpose, how they evolve and are reformed, as well as the pattern of interactions amongst the key actors”, and examines both economic and political institutions (Klein, 2000:456). This understands “institutions” as the rules and norms that shape behaviour. (The term “institutional economics” was originally used in the interwar period by American thinkers like John Commons and Thorstein Veblen (Hodgson, 1994: 58). While the “old” institutional economics also stressed the importance of institutions in shaping “human behaviour and economic exchange” (Lieberherr, 2009:4), it was critical of mainstream (neo-classical) economics for assuming universal basic motivations and rationality).

According to Pollack (2006: 33) for rational-choice institutionalism, individuals always act according to “preferences that are assumed to be fixed”, and they weigh their options to best attain those preferences (also Hall and Taylor, 1996:10; Shepsle, 2005:1). This theory asserts that the way an individual acts is through a strategic calculus (Hall and Taylor, 1996:12). In some situations, the rational individuals may voluntarily create institutions to reduce transaction costs, reduce uncertainty or benefit individuals. For example, for Douglass North, institutions are man-made, and structures that one is born into, and then they shape interactions and “define incentive structure” (North, 1994). Game theory models are sometimes applied, which use maths to try explain how rational actors would operate in specific situations to achieve the outcomes they most prefer (Turoy and von Stangel, 2001).

So, institutions themselves arise from the “need” for certain rules, which help ensure collective outcomes are “optimal” for the actors affected (Holton, 1992; also Hall and Taylor, 1996:12). The actors “create the institution” to realize the goal, and this “institutional creation usually revolves around voluntary agreement by the relevant actors” (Hall and Taylor, 1996:12). A new institution means new rules, and these shape what individuals can do, although the individuals are always “homo economicus”. The claim is also that individuals will prefer institutions that give less “uncertainty about the present and future behaviour of other actors” precisely because they are rational maximisers (Hall and Taylor, 1996:7). If the new institution is subject to a primary process of competitive selection, it survives because it provides more benefits to the relevant actors than alternate institutional forms” (Hall and Taylor, 1996:12).

2.3 From Rational-Choice Institutionalism to Historical Institutionalism

This rational-choice institutional theory has been subjected to extensive critique. It has been accused of trying to explain the larger society using the model of neo-classical economics, the problem being that neo-classical economics is an abstract and universalistic model that ignores history and society (Hodgson, 1994; Holton, 1992). Neo-classical economics focuses on individuals, and although it can take into account that institutions provide constraints on what individuals *can* do, it does not question what individuals *want* to do. People are seen as “homo economicus”, ignoring complexity and malleability in behaviour. According to Pollack (2006:34),

it assumes that all actors are rational maximisers in their decision-making, which is not necessarily so. If the neo-classical model is not accurate for describing and individuals, can it explain institutions? (Holton, 1992). Treating institutions as products of “homo economicus” ignores problems with the “homo economicus” model.

The theory has a “calculus” approach to institutions that assumes rational and maximizing actors and plans (Hall and Taylor, 1996: 7). According to Lieberherr (2009:4), individual and institutional choices are influenced by norms, values and experiences, therefore one cannot assume the “instrumental rationality” that “homo economicus” takes as normal (also Holton, 1992). New Institutional Economics does admit that rationality is limited in one way, by admitting that human actors do not have the complete knowledge on every decision, and so must choose between acting with inadequate information, which is not “rational”, or trying to attain more information, which lead to the accumulations of transaction costs as they invest more time and resources, which is also not “rational” (Lieberherr, 2009:4). But this still assumes people are “homo economicus”, and have “instrumental rationality”.

The problem is that humans can never have “perfect knowledge, due to their cognitive limitations” (Lieberherr, 2009: 4), and human behaviour is highly variable, shaped by emotions, groups, culture, history and power relations (Holton, 1992). Historical institutionalism does not necessarily dispute that human behaviour can be rational, it just questions the claim that individuals are always and everywhere instrumentally rational, competitive and maximising (Hall and Taylor, 1996:7). As with neo-classical economics (Holton, 1992), New Institutional Economics has also been criticised for not “engaging in empirical tests of their hypotheses” (Pollack, 2006:34). Instead, Pollack (2006:34) states, its theorists “engage in arbitrary domain restrictions conceding the inapplicability of rational choice in a given domain and hence, they ignore the theory-infirming evidence from that domain”. Instead the theorists “often search for conforming evidence of their theory” (Pollack,2006:34).

According to Hall and Taylor (1996:7), historical institutionalism does not assume a simple and predictable model of behaviour, like “homo economicus”. The behaviour of individuals gets affected by institutions, but the major institutions are located

within matrices of power, with the balance skewed to political and economic elites (Hall and Taylor, 1996:6). The rules and norms that operate are firmly fixed within the “organizational structures of the political economy” (Hall and Taylor, 1996:6) not by voluntary rational choices. Institutions are also not just rules and norms, but are formal organizations. They have “distinctive national trajectories” because the rules, norms and organizations are shaped by power and conflict, and different histories of power and conflict, and so, are socially varying (Hall and Taylor, 1996:6). This theory rejects the “postulate that the same operative forces will generate the same results everywhere in favour of the view that the effect of such forces will be mediated by the contextual features that are institutional in nature of a given situation often inherited from the past” (Hall and Taylor, 1996:10).

For example, it has a more “cultural” approach to the behaviours of individuals (and institutions): they are not always abstract and strategic; they are only limited by their own view. According to Hall and Taylor (1996:8), the choices of individuals are not simply based on “instrumental calculation” but rather on how they understand and interpret a situation. This is not just a matter of how much information is available, because individuals are “an entity deeply imbricated in a world of institutions, composed of symbols, scripts and routines which provide filters for interpretation of both the situation and oneself, out of which a course of action is constructed” (Hall and Taylor, 1996:8).

Therefore, context and history provide people not just with information but also influence “the very identities, self-images and preferences of actors” (Hall and Taylor, 1996:8). Further, according to historical institutionalism, power is distributed unevenly amongst different social groups by institutions (Hall and Taylor, 1996:10). The theory presents a world in which “institutions give some groups or interests disproportionate access to the decision-making process; and, rather than emphasize the degree to which an outcome makes everyone better off, they tend to stress how some groups lose while others win” (Hall and Taylor, 1996:10). Who wins and who loses is deeply shaped by history and context: the model speaks of “path-dependence”: “historical developments along a set of paths” are “features of the historical landscape” and are embedded in institutions (Hall and Taylor, 1996:10).

So, historical institutionalism states that institutions are “embedded” in specific class systems and state forms which shape what policies get adopted, and even how they are implemented (e.g. Reuschmeyer and Evans, 1985). Policy choices and outcomes depend heavily on the balance of power in society, and divisions and factions in classes and the state (Sikkink, 1991). Basically, some policies are never options, in given contexts, and policies adopted always depend heavily on who is in charge. Peter Evans (1989) argued for example that the very development outcomes of states adopting almost identical import-substitution-industrialisation strategies depended on the context in which the policy was “embedded”. So, basically, the actual implementation of a policy – the policy in practice – also varied greatly, depending on context. For Evans, this variation was directly linked to the systems of power and to national path-dependence (history): different implementation is due to different state forms, and different states are due to different histories and to different class structures and struggles, that surround and overlap with the state.

2.4 Background to State-Owned Enterprises in South Africa

South Africa’s economy over the several centuries had been shaped by its abundant natural resources and by the impact of European colonisation (Kemp, 1991). Before the 1880s, there was no “South Africa”, there were various colonies, republics and kingdoms. The opening up of massive diamond and then gold mines from the 1860s saw the start of industrialisation, which helped fund a massive transportation grid. The economy rested not just on minerals but on a larger supply of cheap and largely rightless black African labour. The country was unified after a series of wars by the British Empire, and became a self-governing Union of South Africa in 1910. Its economy at the time was typical of a colonial country, being based on exporting raw materials, and importing manufactured goods from the mother country (Britain).

Its State-owned companies are organisations that are under the ownership / control of the government of the Republic of South Africa (Pricewaterhousecoopers, 2011:4). The first major state-owned company was created in South Africa in 1910, the SAR&H. Also established that year was the Department of Posts and Telegraphs, to oversee the development of postal, telephony, broadcasting, infrastructure and related services (Ritchken, 2014:5). These were both ways of unifying the new

country's infrastructure and government, and of building the economy. A Land and Agricultural Bank was formed in 1912, under pressure from white farmers.

In the 1920s, a number of new state-owned companies were formed: the aim was now much more ambitious, to provide the state with the necessary tools to build up a "diversified industrial economy", as opposed to one based on mining and farming (Ritchken, 2014:5). A key goal was now import-substitution-industrialisation, and state companies assisted by providing infrastructure and cheap inputs e.g. through the state-owned ISCOR (1928) for iron and steel (Coutsoukis, 2004). More followed in the 1930s, these were later joined by the Industrial Development Corporation (IDC) in 1940, a state bank to assist the development of new industries (Coutsoukis, 2004).

According to Coutsoukis (2004), the IDC was instrumental in the establishment of new state enterprises like the "Phosphate Development Corporation (Foskor); the South African Coal, Oil, and Gas Corporation (SASOL); and the Southern Oil Exploration Corporation (Soekor)", formed in 1951, 1950 and 1965 respectively. Revenue from the mines (through tax) helped fund state-owned companies, most not being profitable. Originally the state wanted the public to fund ISCOR through shares, but this approach was a failure.

The government selected a number of directors for these state companies, but the most decisions were taken by the senior management independent of direct government control (Coutsoukis, 2004). It was "granting or withholdings loans of state money by the government" that gave "primary control" (Coutsouki, 2004). Some also partnered with private enterprises, to found other companies, keeping the majority of "shares of stock" (Coutsoukis, 2004). By the mid-1940s, secondary industry was overtaking mining as leading contributor to the economy.

The policy of import-substitution-industrialisation adopted by South Africa from the 1920s was very similar to that adopted in the same period in Argentina and Brazil (see Sikkink, 1991). In all three cases, a major aim was to diversify the economy and build up local manufacturing, to escape the status of a raw-material-exporting colonial-type economy. According to Greenberg (2006:6), the new state-owned companies in South Africa were actively used for the "process of industrialisation and economic growth". The ANC itself notes (2012:12) that they were created to "support strategies for economic development and promote [the] public interest,

however over time the definition and references of those institutions have gradually evolved”. Their contribution to the development of the country has been significant, though they have been plagued by “structural and operational problems” (Fourie, 2001:205).

2.5 Race and the State-Owned Companies

But there were important differences with South American examples. While part of the reason for import-substitution and a growing role for state-owned companies was to weaken the control of the British Empire, they were also intended to assist white capitalists and pacify the militant white working class (Kemp, 1991). The Land Bank largely ignored black farmers, in favour of white farmers. From a historical institutionalist perspective, it is possible to shift the shift in policies in the 1920s as due to the pressure of a section of local white (often Afrikaans) capital, that wanted protection; a political project of Afrikaner nationalist forces, which wanted to weaken the British connection; and demands by white workers and white farmers for state assistance. This was strong enough to push through major policy changes, and it was partly able to do this, because South Africa was self-governing (not under direct British rule), and had a mainly-white voting system (which meant these white classes had a lot of influence) (Kemp, 1991).

The policy of state industries and import-substitution continued when the NP formed a second government in 1948. The NP was based on a “cross-class alliance with an Afrikaner ethnic identity; that is the farmers and businesses that were battling to compete with the dominant English mining capital” (Greenberg, 2006:8). This reinforced the policy developments of the 1920s, many of which had been driven by the 1924 government, run by the NP in coalition with the white workers’ Labour Party.

This time around, state resources were used on a much larger scale for Afrikaner economic empowerment, including “pressuring English mining capital in particular, to transfer blocks of economic wealth to Afrikaner ownership” (Greenberg, 2006:8). There was the “establishment of a wide range of institutions including the parastatals that provided the base for the expansion of Afrikaner capital into previously

underdeveloped sectors of the economy” (Greenberg, 2006:8). The Land Bank under the apartheid government “only granted loans to the minority and excluded large segments of the South African population” (Greenberg, 2006:8).

Essentially import-substitution gave local white businesses protection from outside competition, and the state-owned companies provided local white businesses with cheap supplies like subsidised steel and white workers with protected jobs and training (see Kemp, 1991). By contrast, black business was suppressed by the state, while Afrikaner capital was favoured with “access to contracts and subsidies” (Truth and Reconciliation Commission Report, 1998:30). State-owned companies thus also functioned “as a financial arm of apartheid”, for instance, many black areas were often left with no electricity services, and in some instances “electrified black areas subsidised white areas” (Greenberg, 2006:8). These state-owned companies were embedded in, and helped support, the prevailing inequality across the society.

The state-directed industrialisation was also used to “hold the white working class components of the hegemonic bloc in place through various means” (Greenberg, 2006:8). According to Greenberg (2006:8), “One was the provision of sheltered employment for a large section of the Afrikaner white working class”. It should be noted that many white workers in state employment received relatively low wages, but better in general than those of blacks, Coloureds and Indians. Further, a high standard of municipal services including parks, libraries, public transport, health care, cemeteries, food prices subsidies on bread and milk and so on were received by white citizens (Greenberg, 2006:8). According to Ncube, Shimeles and Verdier-Chouchane (2012:7), during apartheid, black South Africans were discriminated against in “employment, skills development in business ownership and control as well as in access to basic social and physical infrastructures”.

The state social security system was designed primarily for whites. “The political and economic oppression of the blacks has indeed shaped the country’s poverty profile along racial lines” (Ncube *et al*, 2012:17). This included employment in the state-owned companies. These provided sheltered employment as, according to Greenberg (2006:8), there was “labour market intervention” in the form of job reservations, which blocked competition from the black workers; and, despite the fact that the majority of the “state workforce” were black, they were never provided the same

benefits as those afforded to white employees (Greenberg, 2006:8). The benefits for white workers could include housing subsidies, pension schemes, and access to low-end “holiday resorts” at state dams (Greenberg, 2006:8).

From a historical institutionalist perspective, this “racial” import-substitution model makes sense when it is realised that the state formed in 1910 was white-dominated, and was shaped by pressure from a powerful Afrikaner nationalist movement, local business lobby and militant white workers. Black business was marginal, black state officials were (at this time) mainly “traditional” chiefs, and black workers did not have a strong movement at the time. Meanwhile, the state as an institution also increasingly used the state-owned companies for defence. According to Kahle (2007), they started to play a military-strategic role from 1948, providing direct access to arms through a state-run ARMSCOR, formed in 1968, and a way to “mitigate sanctions”, particularly in the fuel and energy sectors, through ESKOM (electricity, 1923), SASOL, Soekor and others. The state-owned companies helped the “apartheid state survive sanctions, blockades and continue to grow [the] economy even though ... for the benefit of the minority and detriment of the majority” (Presidential Review Committee, undated:7).

2.6 From SAR&H to Transnet

Transnet’s roots lie in the SAR&H formed in 1910. The SAR&H was a merger of a number of pre-existing transport systems. Before the 1867 opening of diamond mining in the interior, the area that became South Africa was marginal to the global economy, and internally disconnected with poor infrastructure (Kemp, 1991). Private railways developed, but in 1872 and 1877 became the property of the Cape and Natal colonial governments respectively, and rail became a state monopoly (Modubu, 2003). Harbours were upgraded by states as well. In the interior, the private Netherlands South Africa Company operated a system in the Transvaal Republic, a “railway commission ... required to report to the Volksraad [parliament]” (Modubu, 2003:3). This and other remaining private railways, like the Pretoria-Pietersburg Company, were all closed by the end of the Anglo-Boer War (1899-1902) (Modubu, 2003:3).

By 1910, the railways system was almost entirely state-owned, and was consolidated into one entity as SAR&H, the final mergers taking place as late as 1916 (Modubu,

2003:2). The SAR&H became a “proud established arm of the government” (Modubu, 2003:2). According to Stander and Pienaar (2002: 56) despite SAR&H being pardoned from “paying certain taxes, licences and levies on inputs and having a grant allocated to them every year by treasury to cover costs”, it faced “several challenges”. SAR&H had to provide “unremunerated socio-economic service[s] which led to them experiencing difficulty in covering construction, maintenance and operational costs” (Stander and Pienaar 2002:56).

Until the 1980s, such loss-making by state companies was quite acceptable, as the primary aim of SAR&H and other state-owned companies was not to make a profit, but to assist with industrialisation and white rule. It has been argued (Hentz, 2000:203), that giant state-owned companies like ISCOR and ESKOM played a key role in the country’s economic growth, including the “boom” of the 1960s. (Greenberg, 2006:55). It should be noted though that the good infrastructure that was developed by the state was “skewed” towards particular areas and races, and, in SAR&H, although the state had “cross subsidised commuter services, these were geared towards maintaining the irrational settlement patterns of apartheid” (Greenberg, 2006: 55).

By the late 1970s, South Africa was coming into crisis. The society was filled with policies to “develop the economic and political power of a small minority and to exclude many of South Africa's citizens” (Greenberg,2006:8). Basic needs were unmet resulting in “hunger, malnutrition and under education especially in rural areas”. For the system to work it required low black wages, and poor conditions, but this required discrimination, which provoked widespread protests and international condemnation (Greenberg, 2006:8). This also meant the domestic market was very small, so the local market became saturated (Kemp, 1991). The highly unequal education system meant a lack of investments in developing the “human capital of the population”, with which protection led to an “unproductive manufacturing sector characterised by outdated technology, processes and organisations” and skills problems (Green, 2009:2; also Kemp, 1991).

So, the mining industry continued to dominate exports, but this meant that “wide fluctuations –especially in the price of gold – eroded currency values and reduced the country's ability to import goods” (Greenberg, 2006:8). A big reason for the

fluctuations was an international economic crisis, which started in the early 1970s and persisted for years. Industrial development could not be sustained through domestic resources, and there was “stagnation in some areas when foreign capital was reduced in the face of strong international pressures for political reform” (Greenberg, 2006: 8).

According to Coutsoukis (2004), large foreign loans that were “called in and cut off in 1985” led to capital shortages for the state enterprises, as they were often received by them. State-owned companies, and not just in South Africa, were at this time also becoming widely criticised for failing to meet their goals (Pricewaterhouse Coopers, 2011:5), and for financial and economic performance that generally failed to meet the expectations of their creators and funders (Nellis, 2005:8).

Many state-owned companies in Africa, more particularly those “in infrastructure; energy; water; sewerage; telecommunications; transport” were accused of a “long history of poor performance” (Nellis, 2005:8). They had conflicting aims, and proved to be “a big drain on state resources” (Nellis, 2005:8). The managers were said to be unable to respond to constant changing market conditions, as they were not allowed to retrench, close facilities, change contracts or products. According to Kahle (2007), some saw the reason for their poor performance as due to political and social objectives taking priority over business or financial objectives.

In this situation, the ideas of neo-liberalism that were spreading around the world came to have a major impact on the NP, which moved away from import-substitution. The apartheid state was facing severe economic and social challenges, and, along with limited and industrial relations political reforms, started moving towards what are now called neo-liberal policies (see CRIC, 1989A). Neo-liberalism is a theory that has philosophical roots in Adam Smith’s free market school of thought (Narsiah, 2002: 3). According to Harvey (2007: 22), it argues “human well-being can best be advanced by the maximization of entrepreneurial freedom with an institutional framework that is defined by private property rights, individuality and free trade”. It rejects government intervention in the domestic economy (for example, through state-owned companies or import-substitution) because state involvement is seen as “inefficient, bureaucratic and an unnecessary drain on public offers” (Shangase, 2008:53).

It is presented as the one and only solution for economic recovery and improved conditions, with market liberalization allowing a deregulated capitalist sector to solve the problems (Paus, 1994:32). This renewal is seen as requiring the restructuring of state-owned companies, “free trade and open markets, deregulation and the decrease of the public sector while increasing the role of the private sector” (Harvey,2007:27). Alternatives were increasingly discredited before they even reached the table (George, 1999). For William and Taylor (2000:21-22), the rise of neo-liberalism was not natural nor was it inevitable, but due to certain social forces. According to Lehulere (1997:81), it is a programme of “monopolists and financial capitalists” in the situation of global capitalist crisis. According to Sachikonye (2010:13), it is a “hegemonic and oppressive political economic social system” that is promoted by powerful institutions like the International Monetary Fund (IMF), World Bank and World Trade Organization.

In terms of state-owned companies, neo-liberalism promotes the use of corporatization, commercialisation and privatisation. According to Greenberg (2006:3), corporatisation is the “legal process of converting an entity into a company that the State is the sole shareholder”, while commercialisation is the “process depicted at establishing private sector management principles” in a state-owned company. These can be important steps in the process of privatisation, which means the removal of an asset or a service from the state to the private sector. Privatisation can be distinguished into three types, the first being the divesture or sale which is essentially about an outright sale of assets, fully or partially. The second type is closure or cut back, which is about opening space for alternative providers. Lastly it can be in the form of a public private partnership, where public assets are leased out, or concessioned, or otherwise “rented” to the private sector (McDonald et al, 2002:297).

Today’s South African government prefers the concept of “restructuring” as opposed to privatisation, due to union pressures and because of the concerns within its own political constituency (Eberhand, 2007:231). “Restructuring” as a concept is also preferred because it indicates a broad “matrix of options that includes the redesign of business management principles within enterprises; the attraction of strategic equity partnership; the divestment of equity either in whole or in part where appropriate and the employment of various immediate turnaround initiative” (DPE: 2001, in

Sekgobela, 2003:3). As such, this “restructuring” need not be confined to the narrow definition of privatisation as sale of state assets, but still be neo-liberal in essence.

According to Shangase (2008:67), the term “restructuring” has been interchangeably used with that of privatisation by some commentators. But neo-liberal “restructuring” in South Africa has also been used, he notes, to assist programmes such as BEE, for example, by directing privatisation to black-led companies e.g. directing leases and concessions to accredited BEE firms. Restructuring comes up in many different forms, and these can be used in different ways to facilitate and promote black participation in the economy.

Privatisation has also been undertaken by governments across the globe as the key to economic and social reforms. Many governments are of the opinion that state-owned enterprises need to be privatised or commercialised or corporatised to benefit from exposure to free market forces, and since they are regarded as inefficient organisational entities. In the case of South Africa, the sale of state assets was seen as a way to ease the debt burden and provide the government with “new revenue for much needed social programmes” (Jerome and Rangata, 2003). In order for a public enterprise to be privatised it normally needs to be first corporatised, and then commercialised.

In South Africa, SASOL was largely privatised by sales from 1979, and ISCOR from 1987. Large-scale sell-offs run alongside other neo-liberal forms. Transnet is today both a commercialised and corporatised entity that is managed according to business principles. SAR&H was transformed into SATS in 1982: according to Modubu (2003:3), the establishment of the South African Transport Services Act 1981 (Act 65 of 1981) “revoked all the laws that were appropriate for railways services”. SATS was to be commercialised as it could not meet current requirements (South African Transport Services, 1989:3).

SATS was to be controlled and managed like a business, and unlike SAR&H (which was a financially subsidised), SATS was meant to be financially independent (Modubu, 2003:3). It was still however meant to “consider the economic interests and satisfy the transport needs of South Africa” (Modubu, 2003: 3). The Act stated that SATS be managed according to business principles, but there was no “definition for the meaning and the application of business principles” (Modubu, 2003:3). The

commercialisation strategy was full of shortcomings: for example, there was still cross-subsidisation of services, no clear norms for profitability, and the maintenance of services that did not have a competitive advantage and even showed losses (Modubu, 2003:3).

SATS did not manage to meet the challenge of road freight competition either. One reason was that road haulage was now deregulated, whereas earlier, direct competition was strictly limited; and the second reason was that funding changed. SATS, the largest single employer in the transport sector, got less funding, although it was still allocated capital expenditure of R2 billion a year by the apartheid government through parliament, to help maintain and replace “infrastructure on schedule” (Simpson, 2003). SATS’s financial situation would “deteriorate dramatically”, the government also advising SATS “to cut back new rail investment and to focus on increasing utilisation of existing assets” (Simpson, 2003).

Also, according to Cronin (2011), “SATS investment was severely cut back”. Capital grants from government “borrowing and reserves from revenues” initially financed the capital expenditure, but in 1985 “a capital grant amounting to R4 208 million was converted to [a] government loan” (Cronin, 2011). This was part of the “deepening financial and broader economic crises” facing the apartheid state. Eventually, 21 000 wagons that amounted to “12% of the total fleet were not being used, and 60% of the rail network was being used at less than half of its practical capacity” (Cronin, 2011). Problems at SATS and delays in delivering goods led to SATS losing ever more passengers and competition to road freight (Cronin, 2011). The overall condition of “freight and passenger assets was deteriorating and the investment backlog was steadily increasing, as there was a decrease in investment”, and many assets “reached the end of their economic life as the ...1990s advanced” (Cronin, 2011).

Plans to privatise holdings, including ESKOM and SATS, were announced by then-President P.W Botha in early 1988 (Coutsoukis: 2004). The apartheid state was facing severe economic and social challenges, and these economic policy changes were seen as part of the solution (see CRIC, 1989A). Some SATS assets were sold in the late 1980s (CRIC, 1989B), but most privatisation was put on hold due to widespread resistance (see chapter 1). But commercialisation continued: in 1989 SATS was changed into a tax-paying enterprise and the goal of managing “SATS as

a private entity was well within reach ... on the 1st of April 1990 after 80yrs of government and parliamentary control SATS was given company status” (Modubu, 2003:3). It was fully corporatised: a new, limited liability company representing a vast transport network, was formed from SATS, and now renamed Transnet Limited, with the government the sole shareholder (Modubu, 2003:3). However, Transnet also inherited the severe problems of its predecessors.

The company today has a 30-year old backlog. Since the 1980s, SATS / Transnet has not invested much in infrastructure. This led to infrastructure, especially rail, becoming old, unreliable or dysfunctional: when a form of transport becomes unreliable, customers find alternatives like road freight (focus group: Transnet Executives, 2014).

Today, Transnet is governed by its own board, with the CEO of Transnet and its board members appointed by government (still the sole shareholder). Some of Transnet’s subsidiaries are distinct companies with their own boards (Barrett, 2005:2). Others, like Spoornet, are divisions led by an executive structure of senior managers. According to Barrett (2005:2), Transnet does not receive any form of subsidy from government, and pays for its investments from revenue and from commercial borrowing. Barrett (2005:2) further asserts that the government’s only role in the financing of Transnet is to underwrite loans raised commercially. For this reason large expenditure, particularly on infrastructure, requires government approval – which is rare. The Minister who is responsible for Transnet and its divisions, as well as the other state-owned companies, is the Minister of Public Enterprises (Barrett, 2005:2). However, Transnet is also shaped by the Department of Transport, which “is responsible for developing transport policy” (Barrett, 2005:2).

2.7 The ANC and the Continuation of Neo-liberalism

When the ANC came into office in 1994, one of the main surprises was that it continued with the policies of corporatisation, commercialisation and privatisation of state-owned companies. Shangase (2008:55) argues that few ordinary South Africans anticipated the ANC’s adoption of pro-free market policies so early into democracy. Many expected the ANC to carry out the more radical programme of its 1955 Freedom Charter, but the ANC had other plans, and its priorities and plans changed. The ideals of the 1955 Freedom Charter were undermined by the Washington-based

institutions like IMF and the World Bank, who were for the promotion of international financial and corporate capital (Bond, 2001). South Africa was under severe pressure, like many other developing countries (Mostert, 2002:3).

Since the ANC did not have any clear alternative programme when it was unbanned by the NP in 1990, it more readily adopted neo-liberal policies, even though this usually meant there would be retrenchments (van Vuuren, 2013). So, Nelson Mandela stated to business leaders in America: “let me assure you that the ANC is not an enemy of private enterprises... We are determined to create the necessary climate that the foreign investors will find attractive” (in Gumede, 2005:70). The ANC initially considered a Keynesian-influenced Reconstruction and Development Programme (RDP), but this was soon replaced by the neo-liberal Growth Employment and Redistribution policy (GEAR, 1996) (Jerome and Rangata, 2003:6).

GEAR would “re-assure the international investors of its economic orthodoxy” (Camordy, 2002:258). It favoured a lean and mean model (Mostert, 2002:12). The GEAR document does not use the term “privatisation”, but it does make it clear that the government should not focus on owning assets or manufacturing enterprises, but on providing general rules for the economy, cutting spending and attracting private investors (Mostert, 2002:12). By this time, the ANC was formally allied to COSATU and the South African Communist Party (SACP), both of which preferred the RDP approach and nervous about privatisation (Mostert, 2002:13, 21). In adopting GEAR, the ANC had in fact isolated COSATU and SACP (Visser, 2004), who worried that state asset restructuring would cut jobs and lead to poor service delivery (Ayogu, 2001:5). Mfuku (2006:75) notes that both COSATU and the SACP challenged the current economic policy through a series of protests, but did not have much impact.

The post-apartheid government inherited well over 300 state-owned companies: this is just an estimate, as there was no overall register (Shangase, 2007). In 1994, when the democratic government took office a total of 50% of South African fixed capital assets were in state hands (The Presidency: undated). State-owned companies like Transnet had been part of the machinery that “created conditions for skewed developmental forms, irregular infrastructure and service delivery”, and this had to

be addressed by a state advocating “progressive and inclusive economic policy implementation” (DPE, 2000:13).

The 1990s and 2000s saw various efforts to restructure state-owned companies, including Transnet. It was argued that a balance needed to be struck between state development goals, and the commercial goals of the companies (Presidential Review Committee, undated: 7). However, the restructuring undertaken was heavily shaped by neo-liberalism and placed more priority on cost-cutting, business principles and profits than on the welfare of ordinary people. According to Harris and Lauderdale (2002:422), the realities of existing neo-liberalism is that it has contributed to the wealth and human welfare of a minority, while impoverishing the majority of humanity (Harris and Lauderdale, 2002: 422).

Generally speaking, the commercialisation and privatisation of state-owned companies in South Africa has led to job losses and other efforts at cost-cutting (Greenberg, 2006), just as COSATU feared and as was noted in the 1980s (CRIC, 1989A; CRIC, 1989B). Generally, neo-liberalism in South Africa has been blamed for having negatively impacted on the South African society (Williams and Taylor, 2007:23). According to Habbard (2010:6), growth under GEAR was attained at the “cost of employment” and “levels of inequality within the society have actually increased compared with the apartheid era”.

2.8 Black Economic Empowerment (BEE) and State Asset Restructuring

However, while neo-liberalism is important (Williams and Taylor, 2000), it is not the only dimension of South Africa’s state asset restructuring, since the state also has a mandate to deracialise the old state-owned companies (Shangase, 2007). This mandate affects current services, jobs and management systems, and also requires measures to deal with past backlogs. For example, ESKOM focused on connecting millions of township homes to the electricity grid in the 1990s (Greenberg, 2006), and actively promoted BEE through contracts and through affirmative action (Shangase, 2008).

BEE remains a highly contested term in South Africa, but according to Shangase (2008:28), it means economic empowerment in terms of the promotion of “dignified and prosperous lives amongst the previously marginalised groupings”, as well as

attempts to “affect such within a capitalist framework”, including through neo-liberalism, and including through promoting black capitalists. This goal has replaced earlier ANC plans for nationalising industry with measures like using privatisation to favour “designated groups” (Msomi, 2003). The ANC government insists that BEE has to involve a process by which “historically disadvantaged people obtained ownership and control of the country’s productive assets in order to participate effectively in the economy without any institutionalised restrictions that based primarily on race” (Shangase, 2008:30). This includes a capital-owning patriotic black bourgeoisie with “control of the commanding heights of the economy” (Southall and Tangri, 2006:138).

The ANC has struggled to define BEE as “a distinct policy instrument that is geared to benefit the previously disadvantaged majority as a whole and not just the black elite” (Shangase, 2008:30). This has led some to see it as a “sham” that benefits elites only (Msomi, 2003), or as a “narrow” BEE only, that has favoured a tiny politically-connected “empowered elite” in a system of “crony capitalism” (Southall and Tangri, 2006: 115).

The basic idea of using the state and state-owned companies for empowering an ethnic group or a race, and an elite in that group or race, is not new in South Africa: the NP did something similar in the apartheid period, including by directing state contracts to Afrikaner-led firms, and by using state companies to assist white workers. In the post-apartheid period, “broader” empowerment might likewise be achieved by restructuring state-owned companies to provide more equitable services to the black population, given the apartheid history of neglect; by using these companies to train and promote black workers and improve their conditions, given the apartheid inequalities that were manifest in their operations; and by using their resources to benefit black elites through contracts and affirmative action.

Restructuring can be construed as “having a positive outcome if it improves the standard of living of the majority of the population” (DPE: 2000:14). However, “narrow” BEE seems to predominate in reality, with many cuts in state services and infrastructure (including in rail) and the large-scale retrenchments that have taken place in many state-owned companies (including in Transnet).

2.9 Conclusion

This chapter has discussed state-owned companies, in two ways. First, it went into depth regarding the theoretical framework, examining different approaches to understanding state institutions: rational-choice institutionalism and historical institutionalism. Next, the chapter looked at the evolution of South Africa's state-owned companies, and their history. It examined the development of SAR&H, SATS and Transnet, and the problems the entity faced by the 1990s, by which time it was undergoing neo-liberal restructuring, with a variety of controversial consequences, plus the onset of BEE objectives post-apartheid. In terms of historical institutionalism, it can be said that from the 1920s to the 1970s, policy was shaped by a white "cross-class alliance" that wanted protection and growth, against "dominant English mining capital" and British economic power (Greenberg, 2006:8). This started to break down under pressures from economic and political crisis, and massive unrest, and was replaced by a new coalition, committed to neo-liberalism and BEE.

CHAPTER THREE

BACKGROUND: SOCIAL WELFARE AND PENSIONS IN SOUTH AFRICA

“Everyone has a right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance”.

Constitution of the Republic of South Africa, Section 27 (1) (c).

3.1 Introduction

South Africa has a complicated and relatively advanced social welfare system, as compared to that of many countries at a similar level of development (Seekings, 2007). Emerging in the 1920s, roughly the same time as welfare in countries like Argentina, and alongside import-substitution-industrialisation, the emerging state social welfare system initially focussed on “non-contributory social assistance”, particularly around old age pensions for the poor, although on racially discriminatory lines (Seekings, 2007: 256). Running alongside growing state welfare were a range of employer-based pension schemes, both in private and state companies. Understanding these different systems, and their history, is essential to understanding the controversy around the TTPF and the TSDBF at Transnet.

The chapter starts by explaining the types of pension schemes, including the differences between contributory and non-contributory pensions; fully-funded schemes (FF) and Pay-As-You-Go (PAYG) schemes; and Defined Benefit and Defined Contribution models. It also looks at how these models have been implemented by the state and private companies, and locates the pensions in the larger South African social welfare system, including state pension schemes.

3.2 Types of Pensions

A *non-contributory pension* is one where the pensioner makes no contribution, and is really a transfer of cash from another source to the pensioner (Hendricks, 2008: 2). These pensions are almost always provided by states, and South Africa is almost unique amongst semi-industrialised countries in providing such a scheme for the indigent (Seekings, 2007). By contrast, a *contributory pension* is one in which the pensioner must have paid money into the pension scheme when they were still an employee or worker. This is a form of compulsory savings and meant to secure “a

reasonable livelihood in retirement” (Hendricks, 2008:4). It is a *pension fund*, defined by the Pension Fund Act (1956) as “any association of persons established with the object of providing annuities or lump sum of payments for members of former members of such associations upon reaching their retirement dates or for the dependants of such members or former members upon the death of such members of former members”.

But a further part also has to be noted. In a contributory *pension* scheme, the worker can claim tax relief for payments, but in a *provident* scheme, the worker is not taxed on contributions, and cannot claim tax relief. The other difference is that in a pension fund, “only one-third of accumulated amounts maybe withdrawn as a lump sum” at retirement, the “remaining two-thirds must be taken as a pension”; in a provident scheme, “the total accumulated amount of a provident must be withdrawn at retirement” (George, 2006: 6; also Netto-Jonker, 2006).

Normally, contributory pension schemes are run by employers, including state-owned companies, with “membership restricted to employees” but in *retirement annuity funds* “membership is open to self-employed persons” (George, 2006: 6). In terms of employer-managed contributory schemes, the employer will normally pay in, in return for some tax relief (Netto-Jonker, 2006), but obviously would not have to pay for non-employees.

Sometimes the prospective pensioners are given different options in the schemes, such as different premiums going towards different pension pay-outs. This can be full of uncertainties, since people cannot have full knowledge of how long they will live, and this makes it “necessary for workers to be finely-tuned to their own interests in preparation for their retirement”(Hendricks, 2008:4). An advantage of contributory pensions is that the prospective pensioner (and possibly other parties who pay in – see later) generate a large pool of money. This “opens up possibilities for investment” of the funds, “hence economic growth and development” (Hendricks, 2008:4).

Contributory pensions are sometimes managed by states, in the form of general or sectoral pensions for the public, and sometimes by employers, including state employers, for employees (or even non-employees, if it is a retirement annuity) Sometimes the state will pay into the contributory state pension funds, to supplement

individual payments. The state may take various steps to invest the money, to increase its value. Generally the employer will pay into a pension fund (for employees), for tax relief and as part of the contract with the employee.

There are two basic types of contributory pension schemes run by employers, including state-owned companies. A *defined benefit fund* has the value of financial benefits (pension) “determined according to a formula that includes the number of years of membership multiplied by a certain percentage of final salary” (Transnet Annual Financial Statement, 2014). For example, if “the member is entitled to 2 % of final salary for each year, and completes 40 years of service, the member will receive a pension of 80% of his/her final salary” (George, 2006:31). This is a way of rewarding employees for loyalty and long service.

If there is a possible shortfall on the calculated payout, this can be fixed by increasing “the rate of contributions or even by requiring a transfer from employer”, hence the unpopularity of this fund (George, 2006: 6). Within this fund structure, the key is that “members are guaranteed a specific benefit at retirement based on years’ service, with employers funding any shortfall” (George, 2006:4). The “benefit obligations are defined in terms of the member’s salary at retirement”, and are promised to the member and guaranteed by the employer (Sher, 1994 cited in George, 2006:4). One of the greatest advantages of the defined benefit fund is that pensioners are protected from any risk that might affect their pension incomes (World Bank, 1994:84).

By contrast, a *defined contribution fund* is not based on a fixed payout. According to van der Merwe (2010: 309, emphasis added), a defined contribution fund “determines the value of benefits according to the contributions made on behalf of the insured by the employee and the employer, *plus the accumulated returns on accumulated funds*”. According to George (2006:4), a defined contribution benefit design refers to a retirement fund in which the “fixed regulate contributions paid on behalf of the member are accumulated with interest until the members’ retirement”. Despite the determined future benefits, this type of a fund is always uncertain about the “future rates of return and future annual benefits” (World Bank, 1994:83).

Money from a non-contributory pension system, and a defined benefit fund, might be invested to generate more money, but the pensioner is guaranteed a certain payout.

But in a defined contribution fund, according to George (2006:4), the benefits of the members depend on how well the investments are managed, meaning that the “risk and benefit of defined contributions funds” are carried by the members. If investments are fruitful, the member will receive higher benefits but if they are not, pension paid can be much lower than expected (George, 2006:4). This type of a fund is fully-funded, since “people are entitled only to the proceeds of their individual accounts” (The World Bank, 1994:83). Many members view these funds as “means of gaining more control over their retirement”, but they have severe risks (George, 2006: 6).

It is possible to mix defined benefit and defined contribution schemes, into “a combination known as a hybrid structure” (George, 2006:6). There is also another distinction. A Pay-as-You-Go (PAYG) scheme sees pensions received by members being “paid out of current income” (Barr and Diamond, 2006: 17). This could be from the payments of current contributors to the scheme, or from other sources. This sort of scheme is usually operated by states, which can also “tax the working population to pay the pensions of the retired generation” (Barr and Diamond, 2006: 17). A PAYG scheme does not “accumulate interest and contributions made by current employees, as employees [payments] go directly to finance the pensions of retired workers, and nothing is saved to pay for the pension of future pensioners” (Hendricks, 2008:1).

Essentially, current workers pay into a fund on the promise that they will be given a pension in future by the then-workers. The problems might be that of a mismatch: the “contribution rate of the present generation” might not cover the needs of the past generation, or the contributions paid by the current generation might not be matched by the contributions of the next generation (Barr and Diamond, 2006: 17). For an employer, this sort of scheme would work best with a defined benefit scheme, but employers might have to deal with shortfalls if there is a mismatch, as explained.

By contrast to PAYG, Fully Funded (FF) schemes see contributions of the members invested in “financial or physical assets on which return is credited back to the fund” (Barr and Diamond, 2006:17). So, pensions received by the members are “paid out of a fund built over a period of years from its members”, and not from funds transferred from current contributors to past ones (Barr and Diamond, 2006: 17). Barr and

Diamond (2006:17), further state that funding is actually a method of “accumulating financial assets, which are exchanged for goods at a later date”, and can, for example, be a way for states or companies to generate large pools of resources. In effect, “individual contributions are deposited into a saving account and invested in interest-bearing financial instruments or equities” (Hendricks, 2008: 2). Fully funded schemes are more exposed to the “risks and uncertainties of the markets” (Hendricks, 2008:8).

Whilst a Fully-Funded type of pension funding may take many forms, it theoretically always has enough reserved money to pay off any “outstanding financial liabilities, which are defined by the available funds” (Barr and Diamond, 2006:17). This sort of system can work with a defined contribution scheme, since in such a scheme benefits are based on investments and are not guaranteed.

Pension funds can generate vast amounts of resources for investment. According to Clark (1998:139), pension funds are powerful voices in a corporate governance and domestic policy, and they are also potentially an important tool when government manage interest rates and currency exchange rates. Pension funds depend upon the performance of national and international markets for their accumulated wealth, but they are also major players in both the national and international securities markets (Clark, 1998: 139).

3.3 Pensions and the Larger South African Welfare System

South Africa’s state welfare system – including its pensions system – has a large non-contributory pillar, financed by the government through taxes, and delivered in the form of cash grants to people in need (Social Department Development, 2010: 4). These social grants support “vulnerable groups that include children, disabled people and war veterans” and ensure that these people do not live “far below the standard of living” (Social Development Department, 2010:4). They do not require *any* form of contribution by the recipients (van der Merwe, 2010:303), and actually “transfer huge funds to the poor”, contributing greatly to livelihoods, especially those in the rural areas (Hendricks, 2008:2). This is funded by the state on a PAYG basis.

Here are seven types of social grants in South Africa: a child support grant, a disability grant, a care dependency grant, a war-veteran’s grant, a grant-in-aid, a

foster-care grant, and a State Old Age Pension. There is also a special social relief grant. With the exceptions of the foster grant, which is linked to placing orphans with families, all these grants are based on a means test: “whether the candidate possesses the means to sustain themselves without any means of help from the government” (van der Merwe, 2010:303). Taking account of inflation, these means-tests are adjusted each year (Social Development Department, 2010:4).

The child support grants is aimed at children under the age of 18 years, and “provided to the primary care giver of a child, up to a maximum of 6 children”, was R310.00 monthly in April 2014, and was later increased to R320 by October 2014; the disability grant is for disabled individuals from 18-59 years, who “cannot support nor maintain themselves financially due to their health condition”, and was R1350.00 at this time; the care dependency grant is for severely disabled children under 18 years, who need special care, and was R1350.00; the war veterans’ grant is for ex-soldiers of 60 years and up and / or disabled , and was R1370.00; the grant-in-aid is for recipients of the “older persons grant, disability or war-veterans grants” who cannot take care of themselves, and was R310.00; the foster-care grant is given to those granted foster parent status by the court, to take care of foster children, and is not means-tested as the state wants to encourage fostering, and was R830.00; the State Old Age Pension is granted, on a means-test, for people over 60 years, and was R1350.00 (Social Development Department, 2010: 6-7; Black Sash-Making Human Rights Real,2014). Finally, the social relief grant is means-tested assistance for victims of major disasters, and its value varies (Social Development Department, 2010:7). To link this back to pensions: South African people not covered by private or state pension funds, and otherwise destitute, can access a non-contributory and quite modest state pension.

The state also operates several contributory social insurance schemes. This contributory pillar includes an Unemployment Insurance Fund, into which employees and employers pay, which provides short-term relief in “the event of unemployment”; Compensation for Occupational Injuries and Diseases, which “compensates the workers irrespective of whether the employer has paid out a compensation or not”; and a Road Accident Fund, funded by a levy on motor vehicle fuel, in which the “state ... pays out compensation for damages wrongfully caused by the driving of motor vehicles” (Social Development Department, 2010: 8).

The third pillar of the system is various non-state systems, some more-or-less voluntary like income protection plans, or voluntary savings schemes, and some more-or-less compulsory, like employment-based pension or provident schemes. The state promotes these with tax incentives (Social Development Department, 2010:9). For the self-employed and low income groups, this may be the only opportunity they may accumulate retirements funds (van der Merwe, 2010:309). The problems with voluntary schemes are the “inability of poor people to have enough savings for their old age; individuals not making sufficient provision for their old age and opportunities to save being limited because of underdeveloped capital markets” (World Bank, 1994:5). In practice, South Africa’s non-contributory old age pensions, a state grant, provides a safety net for those who lack adequate retirement income.

The pension system in South Africa is an advanced one, but with unequal and incomplete coverage (van der Merwe, 2010: 304). Non-contributory state old age pensions cover millions, but pay very low amounts; employment-based pensions vary in terms of options taken, job type and investment performance in the case of defined contribution schemes; coverage of the informal sector is very poor; and occupational pensions have often excluded some groups of people in formal employment because not all jobs and employees are covered by such schemes, for a range of reasons; finally, people often cash-out pensions upon losing their jobs, and as with provident funds, the money is often used up quickly (van der Merwe, 2010:304).

3.4 The General History of the Pensions in South Africa

Further complicating the problems and inequities, the pension system in South Africa has been deeply shaped by race and apartheid. As elsewhere, Joubert (1999, in George, 2006:3) retirement in South Africa is the result of industrialisation and wage labour, a “creation of modern society”. This involves a situation where many people live off wages, without independent incomes. Prior to industrialisation, people used to work until they had to stop as a result of age or illness, and when they did retire, their farms or families or masters catered for their livelihood. But industrialisation and wage labour created a new problem: what happened when people could no longer work for wages due to age or illness, especially if the household depended on their wages?

Some argued that employers had a moral obligation towards their employees, when they reached old age, and could not work, with funds operated on the basis of trust (Joubert, 1999 in George, 2006:3). But coverage by employers was very patchy and was often avoided by employers, as it led to additional costs and as many workers were only employed short-term. Some employers took the initiative. A pension paid by the British for some of their military staff in 1837 is the earliest record of pension provision in South Africa (Pointing, 2000, in George, 2006: 3). Sometimes unions and workers negotiated for pension arrangements. Downie (2002 cited in Reddy: 2012, 12) notes some employers recognised schemes needed to be created for “pre-funding ... anticipated retirement benefits”. In 1882, the “first pension fund was introduced in the Transvaal (South Africa) Republic but ... not regulated by legislation, it was not seen as ... social insurance” (van der Berg, 1999:13). By the 1920s, some basic welfare schemes existed in SAR&H, for certain classes of employees (Seekings, 2007: 258).

There were other serious problems with early systems in which employees could contribute some of their salary to the “outgoings of life” (Reddy, 2012:12). They mainly covered workers who were earning a good salary as they could afford the “salary sacrifice”, and there were serious problems with premium collection when systems were applied to low-paid workers. Also, a substantial pension was only possible if workers were regularly employed and for a long period, and this did not apply those irregularly employed, underemployed or employed on short-term basis.

This was the context in which the “first non-contributory scheme that was introduced in 1928” in South Africa: run by the state, this was “primarily designed for poor whites and was later extended to Coloureds that qualified and were over the age of 65 years for males and 60 for females” (Social Development Department,2010:56). Meanwhile, the state developed and “expanded its existing state-financed pension and insurance schemes for white soldiers, civil servants, and employees on the state-owned railways and docks” (Seekings, 2007: 259). White workers had pension systems at SAR&H from around 1925 (Transnet Affidavit, 2013). So the state itself put in place non-contributory and contributory schemes in the 1920s, but primarily for white workers.

There were some early proposals to have a non-racial welfare system (Seekings, 2007: 257-258), but this was not really an option for the coalitions in 1924 and 1948 (a major reason was that white capitalists and farmers needed cheap black labour, not a black welfare system). Instead, there was a “civilised labour” policy and a segregated welfare system, where preference was given to white people. Coloureds were included on unequal terms, because they were being seen as being Westernised.

State policy gave whites preference in state-owned companies, and also rewarded companies that did business with state-owned companies if they prioritised whites. More whites became covered by contributory pension schemes in state-owned and private companies, or by the non-contributory State Old Age Pensions, and there was a growth of employment-based contributory pension schemes in the private sector, mainly for skilled and white employees (van der Berg, 1999:13). For example, a provident fund was set up for white gold miners in 1933 (Seekings, 2007: 261). Other policies, like state disability grants, emerged slowly, with the first disability grants for whites in 1946 (Khumalo, 2003:6).

Africans were generally excluded from pensions with the argument that they retained traditional extended families in the countryside, which could take care of retirement. The growing state welfare system followed the pattern of whites first, followed by Coloureds, then Indians, then blacks last. But urban and rural blacks were not treated the same by the apartheid government. In 1943, urban blacks received access to State the Old Age Pensions, although they got less than the other races, and it was only in 1965 that some rural blacks became eligible, again at a lower rate (Khumalo, 2003: 6).

Within the state-owned companies, the civil service, and in the private sector, the expanding system of pensions and welfare was very unequal. For example, blacks, Coloureds and Indians were reportedly not included in the pension schemes at SAR&H until 1971, when they were put on a separate, inferior pension fund (Transnet Affidavit: 2013). Deaton *et al* (1998:133) note that for a long time blacks were excluded from the pension programmes of employers since supposedly did not “belong to a formal labour force”. The main “white” South African government included urban blacks in the 1940s, on the grounds that they were “detrified”. The rest had to rely on extended families, or on homeland governments, that is, “tribes”.

A major reason for the adoption of these policies, including the unusual means-tested non-contributory pension system, was massive labour unrest by white workers in the 1910s and 1920s (Seekings, 2007). It was white workers who pushed through a non-contributory system for the poor; in fact, they wanted all pensions for white workers to be completely non-contributory (Seekings, 2007: 260-261). But as also noted in chapter 2 (part 4), the 1920s was also a period where the state shifted to import-substitution. These two shifts can be explained, from a historical institutionalist perspective, as due to pressure by local white, often Afrikaans, capitalists, farmers and workers, and the politics of Afrikaner nationalist forces, in a situation of self-government and a mainly-white voting system (see Kemp, 1991). This system was deepened with the NP government of 1948 (Greenberg, 2006:8).

One of the distinguishing features of the apartheid system started in 1948 was the effort to develop the homelands into self-governing states. This meant the main South African government and each Bantustan government had different pension funds (Hendricks, 2008:12). In the “white” South African area, there was great inequality: non-contributory State Old Age Pensions for “blacks increased from R14 monthly in 1970 to R45 monthly in 1985, and for whites this increased from R97 monthly to R136 monthly during the same period” (Khumalo, 2003: 6). Access was uneven too: into the 1990s, many black urban and rural pensioners did not receive the State Old Age Pension because of illiteracy or lack of proper identity documents (Khumalo, 2003:6).

The apartheid government meanwhile acted to regulate contributory pension schemes, with an Act in 1956 making South Africa the first country to have a “comprehensive act to regulate retirement funds” (George, 2006:3). The Pension Fund Act of 1956 formalised the pension industry (Hanekom: 2012 cited in Reddy 2012:13). In other countries the behaviour of retirement funds was controlled through a “number of laws and legal principles, such as the law of trust, but was not governed by any specific act” (George, 2006: 3). It was an important “landmark in regulating the financial responsibilities of pension funds” (van der Berg, 1994:18, cited in van der Merwe, 2010: 305).

According to the Financial Services Board (2002:3), it is important to note that not all pension funds are supervised under the Pension Fund Act of 1956. There are

various exceptions, and these include funds created under special laws. These last mainly include those for government employees, and employees of the state-owned companies. For example, pensions at SAR&H and at the Post Office were created by special laws, and the SAR&H pensions were restructured (see later) by the Transnet Pension Fund Act 62 of 1990.

The shape of the contributory pension system has changed over time. Until the 1960s, defined contribution schemes were widely used, but were then increasingly replaced by the more predictable defined benefit schemes (Asher, 2007: 30). According to George (2006:4), the Pension Fund Act of 1956 allowed conversion between the systems by the transfer of members from one fund to another. Fundamentally, it remains the employer that decides whether to participate in a retirement fund or not, and it is also the employer that has the power to decide on the categories of employees that qualify to join the fund (National Treasury, 2004:18).

Before the 1970s, blacks were largely outside of the contributory pension schemes. There were some changes by employers in the 1970s and 1980s, partly under pressure from a new wave of unions. Sometimes the new black trade unions, COSATU in particular, “developed their own provident funds and managed the investments”, rather than trust employers (Social Development Department, 2010: 56). There was also the immense pressure from the black trade unions in the early 1980s to move to defined contribution schemes, which these unions thought were more transparent (George, 2006:4). Pension issues were quite explosive, with many workers opposed to measures to disallow early pension payouts; they wanted their benefits to be paid out before “compulsory preservation funding could be enforced” (Reddy, 2012:16).

The then-government also encouraged “participation in occupational retirement funds ... by providing tax incentives” (Reddy, 2012:15). This was somewhat in line with the 1980s stress on neo-liberalism, because private companies and private citizens would be sorting out retirement, reducing the burden on the state’s non-contributory Old Age Pension grant. There was a continuing shift to defined contribution schemes in South Africa in the early 1990s (Asher, 2007:30). This was on such a scale to lead a number of defined benefits funds to lose membership to the point that they were no longer financially viable (National Treasury, 2004:10).

According to Hendricks (2008:1) towards the end of the apartheid era, the South African government transformed the contributory pension system for employees in the state sector from PAYG to Fully-Funded (FF). The transition from PAYG system required the former contributors to be “securitised by depositing government bonds into the newly created pension fund” (Hendricks, 2008:9). The shift hugely indebted the state, costing it billions of rands (Hendricks, 2008:2). The major problem was that the state was borrowing from itself to secure the “pension funds and retrenchment packages of apartheid-era civil servants” (Hendricks, 2008:3). Because of the transition from PAYG, only the “contributions of current employees were directed into the pension fund”, and the “current pensions had to be financed out of the budget” (Hendricks, 2008: 13). Further, it was “financed by the government bonds that were held by the Public Investment Corporation”, another state body (Hendricks, 2008:8).

According to Hendricks, this debt would have a long-term negative effect on state finances and on the economy, as it was not based on any actuarial calculations (Hendricks, 2008:9). Hendricks argues that the real motivation was that apartheid-era civil servants, including the officials of the ten homelands, feared that any new democratic or ANC government would fail to “honour the pension arrangements made under apartheid” (Hendricks, 2008:9). According to the National Treasury (2012:50) in most countries including South Africa, pension reforms continue to be a “topical policy issue”.

3.5 Pension Reforms in South Africa

As with other elements of the South African society, apartheid left its imprint on pension schemes and pension coverage. Most of the people not covered by adequate pensions were black and poor, often rural (Hendricks, 2008:1). State and company pensions, including in state-owned companies, excluded blacks or, when they included them, did so on unequal terms. Indians and Coloureds were treated slightly better, but all were treated worse than whites. The pensioners were not afforded the same benefits; benefits were based not only on occupational but also on racial lines, with white workers earning more and often doing different jobs to the other workers, such as the Indians, Coloureds and the blacks. State-owned companies were closely

aligned to apartheid policies, and the key place where sheltered employment for poorer whites was created.

From the 1960s to the 1980s, the apartheid state started to increase spending on blacks, Coloureds and Indians, and in the 1980s there was some closing of the gaps in spending. But this was limited by two changes, discussed in the last chapter: the state was moving to neo-liberalism, and this limited how much it could spend; the same basic system that existed from the 1920s was still in place. However, from a historical institutionalist perspective, the system was crumbling. The white coalition broke down in the 1980s, with white workers and poorer whites pushed out of the coalition, and a large section of white capitalists and state officials started to look for ways to compromise with the ANC and change the system (Greenberg, 2006). As shown in chapter 2, the apartheid economy was in crisis, due to a small domestic market and an unproductive manufacturing sector, and pressure from outside (Green, 2009:2; Kemp, 1991). Also, black protests and resistance, including by unions like COSATU, had made the old system unworkable.

In 1990, the NP unbanned the ANC, SACP and other parties, and started negotiations. Some neo-liberal restructuring continued throughout this period. In 1990 SATS became the corporatised Transnet. By the end of 1993, the ANC was co-governing with the NP through a transitional executive council, and it won the 1994 elections. The RDP was soon replaced by GEAR, and the neo-liberal changes continued. But the big difference was that the ANC was also committed to BEE and removing racial inequalities and restrictions.

One of the main changes it made was to equalise all social grant payments, so that there was no longer a real distinction between benefits paid on the basis of race. Anyone can get a grant, so long as they pass the means-test. BEE was meanwhile applied, including in and by state-owned companies. The many fragments of the apartheid state were merged. Today, the biggest single pension fund in Africa, with more than “1.2 million active members, and assets worth more than R1 trillion”, is the Government Employment Pension Fund (GEPF) (Hendricks, 2008:12). This is a defined benefit fund created in 1996, by merging all the Bantustan pension funds, with the main pension fund of the old “white” South Africa (Hendricks, 2008:12). It

took around ten years for the GEPF to get its own management of board of trustees: until 2005 the Minister of Finance was the sole interim trustee.

By 2001, according to van der Merwe (2010:308), the total assets of the retirement industry in the country amounted to “R836 billion (86% of the Gross Domestic Product (GDP))” and the “net assets of the self-administered funds amounted to 40% of the GDP” (Registrar of Pensions Funds, 2001:8 cited in van der Merwe, 2010:308). Hendricks (2008:5) notes that in 2008 there were over 13 500 private pensions in South Africa, which consisted of “Occupational Pension Funds, Provident Funds and Retirement Annuity Funds based on personal plans”, but around “four-fifth of these funds had fewer than 100 members” which have inflicted “huge administrative costs and regulatory challenges”.

3.6 Conclusion

This chapter has discussed the history of pension funds in South Africa by discussing how the pension funds were created based on racial lines which excluded many black Africans, as well as Coloureds and Indians. This chapter also explained the different pension systems that existed in the past in South Africa and placed these alongside the larger state welfare system. It looked at these funds, and at welfare, and how these changed before and after 1994.

Before, and during, apartheid in South Africa, workers were not afforded the same pension benefits: everything varied according to race. The pattern of unequal benefits amongst workers of different races is an imprint left by the apartheid government that is still greatly felt in post-apartheid state-owned companies, including among Transnet pensioners and workers. It is clear that the pensions and welfare systems have been affected both by workers’ struggles, and by the larger shape of society, and that pension systems were shaped by apartheid and also by economic problems, of which the impacts again, can still be greatly felt today.

CHAPTER FOUR

TRANSNET OPERATIONS AND PENSION RESTRUCTURING

FROM THE 1990S

4.1 Introduction

By this stage, it will be clear that the situation in the Transnet pension funds have to be located in a long history, a history tied closely to apartheid. The focus in this thesis is on the Transport-Transnet Pension sub-Fund (TTPF) and the Transnet Second Defined Benefit Fund (TSDBF), which have roots in the SATS pensions. (The thesis does look at the third pension fund, the Transnet Retirement Fund). So, to understand the controversy around the TTPF and the TSDBF, it is important to understand the way that the TTPF and the TSDBF are shaped by past events and policies, and the ways that they have been shaped by neo-liberalism, the transition from the NP to the ANC, and the post-apartheid restructuring of state-owned companies.

4.2 Neo-liberal Restructuring at Transnet from the 1990s

Today, Transnet is governed by its own board, with the CEO of Transnet and its board members appointed by government, which is the sole shareholder through the Department of Public Enterprises. Some of Transnet's companies are subsidiaries with their own boards (Barrett, 2005:2). Others, such as Spoornet, are divisions led by an executive structure of senior managers. According to Barrett (2005:2), Transnet does not receive any form of subsidy from government, and pays for its investments from revenue and from commercial borrowing. Barrett (2005:2) further asserts that the government's only role in the financing of Transnet is to underwrite loans raised commercially. For this reason large expenditure, particularly of infrastructure, requires government approval. The minister that is responsible for Transnet and its divisions, as well as the other state-owned companies is the Minister of Public Enterprises (Barrett, 2005:2). However, Transnet is also shaped by the Department of Transport, which "is responsible for developing transport policy" (Barrett, 2005:2).

From the 1980s, first with SATS, then with Transnet, this state-owned company has been subject to neo-liberal restructuring. In 1981, the country's "railways harbour, road transport aviation and pipeline operations" became known as SATS, which was used by the state to administer its railways and harbours in place of SAR&H (Greenberg, 2006:54). SATS operations were meant to be commercialised, and privatised, although as seen in chapter 2, this stalled. From 1989, SATS had to actually pay tax, rather than receive tax-based subsidies from government. In 1990, it became Transnet. During these changes, SATS and Transnet were divided into what were meant to be financially separate companies, divisions or subsidiaries, each with a "localised management" (Transnet Freight Railways, undated: 13).

Transnet inherited the assets as well as the liabilities of SATS, and as indicated in chapter 2, many of the assets were deteriorating (Greenberg,2006:55).The challenges that SATS experienced such as "deteriorating fixed assets and competition from road haulage continued under the management and control of Transnet" (Greenberg,2006:55). So, "commuter trains lost money and customers to privately-owned transport, like taxis because they were quick and operated door-to door; freight rail faced growing competition from private sector road haulage; infrastructure and rolling stock were ageing (the last mainline passenger coach was built in 1980) because of the significant disinvestment in rail infrastructure before 1990" (Greenberg,2006:55). Like SATS, Transnet was under ongoing pressure from neo-liberal state policies to cut the wage bill (Greenberg, 2006: 55).

When SATS became Transnet, it had control over five other companies under it, that according to Greenberg (2006:55) included Petronet (petrol pipelines), Autonet (roads), Spoornet (railways), Portnet (harbours) and South African Airways (SAA). When Transnet was formed and the rail division was transferred to the management of Spoornet, rail commuter assets that included "stations, rolling stock, land and 10% of the tracks" were transferred to the control and management of the South African Rail Commuter Corporation (SARCC) (Greenberg, 2006:56).

When the SARCC was formed, it was controlled by the Minister of Transport and it had a board that included "members of the public, private business and the community it serves" (Modubu, 2003:8). The SARCC was meant to use the rail commuter assets under its control and in a "commercial manner", and to provide

“commuter rail services in the public interest under a subsidy” (Greenberg, 2006:56). In 1992, the SARCC formed Intersite Property Management Services to generate income through renting out advertising and commercial property at stations, and by selling off unused property (Modubu, 2003:8). This generates some money for SARCC, but SARCC is still reliant on “government transfers to subsidise services” (Modubu, 2003:8).

Further restructuring at Transnet in the 1990s led to a creation of more business units under the control of Transnet. Railways were now broken into “Spoornet that included rail transportation freight and mainline passengers”, “Metrorail that included the commuter rail transport services”, plus Transwerk that dealt with engineering especially of railway rolling stock; then there was the National Ports Authority and South Africa Port Operations; Petronet; Freightdynamics that dealt with road freight; Transtel that dealt with telecommunications; and Propnet that dealt with real estate held by Transnet; and SAA (Greenberg, 2006:55). Transnet also had a fleet management business unit (Greenberg, 2006: 60).

The fleet management unit, which ran 9000 of Transnet’s vehicles “was partially privatised with 30% stake sold off for R12 million” (Greenberg, 2006: 60). Until 1993, all airports in South Africa were controlled by the state, and were then transferred into an Airports Company. In 1998, this was partly sold to an Italian port management firm (Greenberg, 2006:59). Meanwhile, SAA underwent corporatisation and was “partially privatised” in 1999, with 2 200 workers retrenched (Greenberg, 2006:58-59). Both privatisations failed, and the state had to buy back the sold parts, but commercialisation continued, because in 2003, a “49% stake in Air Tanzania Company Limited was bought by SAA whilst 51% of ownership was retained by the Tanzanian government” (Minister of Public Enterprise, 2004: 18). In 2006/2007, SAA was broken away from Transnet, as a separate state-owned company, and Metrorail was moved to the SARCC. The SARCC was later renamed the Passenger Rail Agency of South Africa.

When Metrorail was established in 1997, there was a transfer of 10 285 workers from Spoornet to Metrorail (Greenberg 2006:56). The decision was taken to transform Metrorail into a profit-making business, to be operated on business principles including “cost-cutting” (Greenberg, 2006:56). According to Salanje (2002), “cost

containment” often results in the retrenchment of workers. In the case of Metrorail, it led to cuts in “service quality and maintenance”, train reliability, and worker employment (Greenberg, 2006:56). Instead of Metrorail being cross-subsidised by other parts of Transnet, or by being profitable, it has had to be saved with commuter subsidies created from the national budget.

Around 90% of the “rail tracks, the long distance passenger networks and the assets related to these” still remained under the control of Spoornet (Greenberg, 2006:57). In 2004, Spoornet was reported by the Minister of Public Enterprises (2004:9) to be the largest railway company in the southern hemisphere, owning and managing “80% of Africa’s total rail infrastructure”. It carries “59% of total freight tonnage (including bulk) in the country, 29% of all freight tonnage, and has 20 000 route kilometres of track and runs 2500 locomotives and 95 000 wagons” (Barrett, 2005:2).

Spoornet was in turn made of five smaller businesses: the “General Freight Business (GFB), Coal Link that was entirely focused on bulk coal, Orex that was focused on bulk iron ore, Shosholozha Meyl that focused on the mainline long distance passenger service, [and] Luxrail that focused on luxury passenger rail” (Barrett, 2005:2). By 2000, Spoornet was reporting business problems especially with GFB (von Holdt, 20005: 415). GFB was cross-subsidised by Orex and Coal Link to R1.8 billion, which was a loss to these units, annually, of R1.8 billion (Barrett, 2005:3). Portnet also had a history of “cross-subsidising” the rail lines that were making a loss, as they were “the most profitable part of Transnet”; in the past, the ports were state-controlled although there were “some private terminal operators” (Greenberg, 2006:58).

GFB did not run well as a business, which negatively impacted its “financial sustainability and customer satisfaction”, and “customer dissatisfaction and deregulation of road transport” since the 1980s had seen massive losses to road freight (von Holdt, 2005:415). In 2000, there was an announcement that all Spoornet business units (except GFB) would be privatised through concessions (Barrett, 2005:3). This obviously meant removing cross-subsidies to the GFB. It was also planned to cut costs by firing up to 15 000 workers and cutting rail coverage almost

by half, to 10, 500 kilometres (Barrett, 2005:3). Any lines that could not be concessioned or used by the GFB would be closed down (von Holdt, 2005: 416).

The plan to privatise and concession Spoornet business units was met with protest and opposition from trade unions within Transnet, who feared job losses and argued that poor provinces would be the worst affected by railway closures (Barrett, 2005:2; von Holdt, 2005: 418). These included both a COSATU-affiliated union, and two unions affiliated to the Federation of Unions of South Africa (FEDUSA), a more moderate, politically non-aligned, federation with many white, Coloured and Indian members. Working together, these unions further asserted that this transition would “impose additional costs on the state and road use” (von Holdt, 2005: 418). Eventually, a technical working group consisting of government, labour and management developed an alternative plan, with less than 1 000 job losses (Barrett, 2005:9).

However, by late 2004, Transnet seemingly went back on its word. Unions threatened the worst strike in Spoornet’s history when the railways firm announced massive retrenchments in the immediate wake of Transnet’s ongoing financial losses (Bond, 2007:13). Meanwhile, other forms of restructuring continued. For example, according to Greenberg (2006:58), “an independent port regulator and the national ports authority were formed in 2001, with the latter controlling the former because the ports operations were potentially competitive”. In 2006/7 Transnet was further restructured to make it easier to dispose assets or businesses which did not “form part of the building of a world class bulk freight transport and logistics company”, and to move away from cross-subsidisation (Government Gazette, 2011).

Unions (Barrett, 2005; von Holdt, 2005) and opposition parties (interview: Adv Alberts) have argued that state-owned companies have a key role to play in promoting growth in the country, and both also claim that the state has neglected Transnet in spite of its importance. Thus, the FF+’s Advocate Anton Alberts stated:

With regard to Transnet ... [its] financial troubles ... kept it from performing as it should. This resulted in road freight increasing and placing huge stress on the national roads network. Transnet has only recently become a priority as part of the infrastructure upgrade necessary for economic growth as set out in the National Development Plan and the

Industrial Policy Action Plan. Transnet still needs to properly upgrade its service delivery to establish itself as an integral part of the country's economic infrastructure.

4.3 Pension Restructuring at Transnet from the 1990s

As indicated in the previous chapter, South Africa's state-owned companies played a developmental role, boosting the economy, but were also closely tied into the larger system of racial inequality. Besides providing uneven services, these companies also structured their workforces along inequitable racial lines, including in terms of wages, job security, occupations, and benefits, including pensions.

The SAR&H established a pension fund for white employees in 1925, the Railways and Harbours Superannuation Fund, and renamed the New Railways and Harbours Fund in 1971 under the Railways and Harbours Pensions Act no.31 of 1971 (Transnet Affidavit, 2013). It took almost fifty years before a fund was established for non-white employees: the Railway and Harbours Pension Fund for Non-white Employees was finally established in terms of the Railways and Harbours Pensions for Non-Whites Act, no. 43 of 1974 (Transnet Affidavit: 2013). There were two separate funds, with unequal benefits. Also, since the Railway and Harbours Pension Fund for Non-white Employees was only formed in 1974, and since the funds were paid from wages (South African Transport Services, 1989:75), many black, Coloured and Indian employees worked for years only to retire on a mere pittance.

The possibility of equalising the funds was at the time really ruled out by the larger apartheid structure, and by the shift towards neo-liberalism. SAR&H became SATS in 1982, was commercialised in 1989, and made into the tax-paying Transnet in 1990. It was changed from being "state-supported service that was not concerned about making profit, to an organization that was profit-seeking" (Greenberg, 2006: 54). This situation made it very unlikely that SAR&H/ SATS/ Transnet would equalise the pensions, or pour money into the relatively new Railway and Harbours Pension Fund for Non-white Employees.

However, there was an important change in 1990. Not only did Transnet inherit the assets, obligations and liabilities of SATS, but it also, in terms of the 1990 Transnet Pension Fund Act of 1990 (TPFA), merged the two pension funds into a single

Transnet Pension Fund (TPF) (PMG, 2007:12). This meant that all employees, regardless of their race, finally belonged to one pension fund (PMG, 2007:20).

The merger of the two pension funds was an attempt to close the gap between these two kinds of employees, but while it was a step in the right direction, it did not address the fact that workers benefits would differ due to the fact that black, Coloured and Indian workers were paid less than their white counterparts (PMG, 2007:20). Transnet management admits that it that it did not equalise the pensions, although it did try to make sure calculations were used consistently during the merger. During the reign of SATS:

...there were jobs reserved for whites, and jobs reserved for non-whites. Transnet called the poor of the poorest to get their benefits calculated based on the salaries they were receiving. They unfortunately could not increase their salaries to that of the white workers, so they could retire with the same amount as white pensioners. Salaries could not be adjusted (focus group: Transnet Executives, 2014).

All SATS employees and pensioners were transferred to Transnet, and according to Transnet (Transnet Affidavit, 2013), it also assumed SATS's obligations to inject funds from time to time to the pension funds to ensure that it was in a sound financial position (also see Pensioners Affidavit, 2013). It has been suggested by some (Salanje, 2002; Pensioners Affidavit, 2013) that the new TPF started with a deficit of R17.2 billion. The Legal Succession to the South African Transport Services Act, no.9 of 1989 states that "all the obligations of SATS that were transferred into Transnet are guaranteed by the state" and that "the guarantee obligation of the state in respect of the pension funds shall reduce as Transnet pays the amounts plus interest, in terms of its obligations" (Transnet Affidavit, 2013). This means that as the pensioners reduce in numbers, the state's liability would decline.

The TPF was a defined benefit fund, meaning that the pension benefits of the employees were guaranteed by Transnet (PMG, 2007:12), and so, ultimately by the government as a whole, since "all the obligations of SATS ... are guaranteed by the state". This is potentially much more expensive for Transnet and the state, than a defined contribution fund, as noted in chapter 3. Further,

As Transnet we have also removed the benefit policy that was discriminatory to the widow of pensions of the former non-white fund (Transnet Affidavit, 2013).

Until 1998, widows of black, Coloured or Indian pensioners did not receive a widows' pension, as the system until this stage only recognised only white widows as beneficiaries. In 1998, rules were changed to allow black, Coloured or Indian widows to get 70% of their deceased spouse's pension. The legislation was changed, and Transnet paid in R77 million to the TSDBF to make this equalisation possible, a broad BEE operation (Transnet Affidavit, 2013).

But in terms of actual pensions, there were no changes made, even when the TTPF and TSDBF were created.

Then, in November 2002, the TPF was restructured into several different funds, including TTPF and TSDBF, the governing Act being amended (Pensioners Affidavit, 2013). Two were defined benefit funds, and one was a defined contribution fund. The funds are not subjected to the Pension Funds Act, so pensioners have “no recourse to the pension funds adjudicator and the funds are not subject to the inspection for financial soundness by the financial services board” (Cranston, and Munshi, 2013).

The Transnet Second Defined Benefit Fund (TSDBF) was solely for Transnet employees that had retired before 1 December 2000 (PMG, 2007:13; Pensioners Affidavit, 2013). It is a closed fund in that people employed by Transnet after 1 December 2000 cannot join (Pensioners Affidavit, 2013). The TSDBF is a pensioner-only fund with no working members, and is funded from investments. It apparently had a total of 103 089 pensioners and beneficiaries at its founding (Pensioners Affidavit, 2013). If this fund experiences financial challenges, Transnet is obliged to meet the shortfall, and in cases where it cannot do so, the state has to honour the guarantee and fund this defined benefit fund (Pensioners Affidavit, 2013). According to the 2014 Transnet Annual Financial Statement (2014:92), “the inclusive membership as at 31 March 2014 was 62 504, whilst in 2013 it was 65 653”. This fund includes black and white pensioners and their widows and dependent children.

The second new fund was the Transnet-sub fund of the Transport Pension Fund (TTPF). Originally this fund was for people employed by Transnet at 1 December 2000, who wanted to remain on a defined benefit fund (Momentum, undated B). No new members were allowed into this fund, and Transnet encouraged all of its existing members to join the new Transnet Retirement Fund (TRF), which was a defined *contribution* fund. All new employees had to join the TRF. So, the TTPF comprises “current employees at Transnet who chose to remain as members of the fund at 1 November 2000, and pensioner members who retired subsequent to that date” (Transnet Annual Financial Statement, 2014:90).

With the breaking away of SAA and of Metrorail, the Transport Pension Fund was broken into three sub-funds, one in each entity, so this is why the TTPF is the *Transnet-sub* fund. This was done through the Transport Pension Fund Amendment Act “with effect from 11 November 2005”, which changed it into a “multi-employer pension fund” (Transnet Annual Financial Statement, 2014:90). There is also a sub-fund in the name of SAA, and one in the name of the SARCC (later, the Passenger Rail Agency of South Africa). As at 31 March 2014, the TTPF had 4 975 members and pensioners, whilst at 31 March 2013 it had 5 044 members and pensioners (Transnet Annual Financial Statement, 2014:90). Twice a year, members of the TTPF are provided the opportunity to transfer to the TRF if they desire. Almost none do so (13 in 2014, and 15 in 2013).

The TRF had 65 443 members as at 31 March 2014, and 66 322 members a year before (Transnet Annual Financial Statement, 2014:90). All Transnet’s employees can be members of the fund (Transnet Affidavit, 2013). Since it is a defined contribution fund, pensions vary according to investments, and investment risks are not carried by the employer but by the member. The value of the benefit that ultimately “accrues to a member is determined by the accumulation of contributions directed towards retirement funding, together with investment returns, net of taxes and on-going investment management charges” (Momentum, 2013). The overall objective of the fund is to “achieve the highest possible level of investment performance, within acceptable levels of risk to the maximum benefit of member and all other stakeholders” (Momentum, 2013).

4.4 Core Challenges facing the Transnet Pensions

All three funds –TSDBF, TTPF and TRF – are part of the larger Transnet pension fund system. According to Advocate Alberts (interview, 2014), of the members of the TPF and the TSDBF that have instituted a class action against Transnet, 55% are white and 45% are black, Coloured and Indian (interview: Advocate Alberts, 2014).

There are several key problems facing the TSDBF and TTPF.

The first is that, as occupation-based pensions, with set benefits, and a history dating back to the time of SAR&H and SATS, some pensioners earn/ed more than others because of the job position they had and/ or their racial group. As noted above, the creation of a single pension fund with Transnet did not remove this basic problem. It was hard to remove, because of the limited funding SATS / Transnet were receiving from government as well as its ongoing business problems. So, Transnet as a company group provides “various past retirement benefits to its active and retired employees including pension, post -retirement medical and other obligations” (PMG, 2007:20). But, according to the Legal Succession to the South African Transport Services Act, no.13 of 1989, although “ all the obligations of SATS that were transferred into Transnet are guaranteed by the state”, they “are limited to the amounts payable to such funds by SATS”(Transnet Affidavit, 2013). So, the government is not bound to spend extra money on the SATS / Transnet pension funds, or to equalise the pensions.

Second, most ordinary SAR&H / SATS/ Transnet workers, whites included, had earned relatively low wages. According to Benwell (2010), in 2008 whilst an average pension per month was R2800.00, others received as little as R219.00 per month with “almost 40% of the pensioners receiving a pension income that was less than a state social pension of R1080.00”.

Third, according to the Department of Public Enterprises (2000), the merger of SATS’s two pensions into one Transnet fund did not remove existing financial problems in the funds, but actually “further compounded the debt”. When Transnet inherited the pension fund from SATS, it reportedly also inherited a deficit of R17.2 billion (Salanje, 2002; Pensioners Affidavit, 2013). For a defined benefit fund to be in a sound financial position, it has to have more active members than pensioners, but for Transnet the reverse is true. This had led to problems for “defining asset and liability models aimed at making strategic investment decision” (DPE, 2000).

One way that Transnet apparently tried to sort the funding problems was the sale of the V&A Waterfront in Cape Town. This is an old dockside, with potential for upgrading for tourism and commerce, and was being redeveloped in this way by Transnet. From 1990-1995, Transnet was the sole owner of the V&A (Victoria & Alfred) Waterfront (Dludlu, 2008). According to Dludlu (2008), in 1995 Transnet partly “sold” it to its pension fund. So, some pension fund assets were tied up into another Transnet property, which was put into a holding company. When the pension fund was restructured into the TSDBF, TTPF and TRF, there was “the adjustment of the equity interest at Transnet and the three retirement funds as shareholders of V&A Waterfront” (Dludlu, 2008). Transnet owned 26% of the shares, and the three pension funds at Transnet collectively owned the 74% (Dludlu, 2008).

In 2006, the V&A Waterfront was privatised to a South African registered company, named Lexshell 44 General Trading (Pty) Ltd, that bought V&A shares of Transnet and its three pension funds. (Dludlu, 2008). According to Dludlu (2008), the sale of the shares was made possible by a “competitive bid” that attracted a large number of “local and international investor interest in the V&A Waterfront”. The deal was public, approved by Transnet’s board of directors, and by the boards of trustees of all three of its pension funds. The necessary “corporate and governments approval” in terms of the Public Finance Management Act was obtained by Transnet (Dludlu, 2008). The shares owned by Transnet and its three pension funds were sold for approximately R7 billion (Dludlu, 2008). However, the sale was criticised for its timing and the reasons behind it (The Presidency: undated).

According to some reports, in another attempt by Transnet to “fulfil its obligations” without drawing on the state Treasury, and ease the pension fund problems, the company issued T011 shares to redeem R10 394 billion of the legacy debt in 1990 (Pensioners Affidavit, 2013). Lawyers Geysers and Coetzee (2013), state that these shares were “issued with a fixed interest rate of and with a coupon payment of 16.5% per annum, and payable monthly with a relief date of 31 March 2010”. They claim that the issue of T011 stock resulted in a decrease of the shortfall from R6.5 billion to R3.2 billion (Geysers and Coetzee, 2013). However, in February 2001, the T011 shares were cancelled and exchanged for shares in the M-Cell cell phone company.

4.5 Conclusion

This chapter has looked more closely at how Transnet has been restructured since the 1990s, and how the Transnet pension schemes have changed in this time. It shows that Transnet has been continually restructured across neo-liberal lines and that this has led to job losses as well as pension fund changes. This provides the last bit of background for understanding the controversies around the TTPF and the TSDBF. The chapter also discussed how the challenges experienced by SATS were transferred to Transnet as it inherited both its deteriorating assets and liabilities. The workforce at SAR&H and then SATS was largely low wage, but also structured along inequitable racial lines, thus it took 50 years for black, Coloured and Indian employees to have a pension after the pension fund for the white employees was created. As an attempt to gap the division between the employees of different racial groupings, Transnet merged their different pensions funds into one but that did not bring any change by equalising benefits, since, as this chapter has shown, the pension benefits stayed based on salaries earned. In this chapter, it was also indicated that many black, Coloured and Indian pensioners retired on mere pittance because of the low salaries they earned while they were active workers, something that will not change anytime soon since the Transnet management openly admitted that they have no intention to equalise the pension funds by race. But at the same time, pensions for all races were and are low, this reflecting the low wages paid by SAR&H/ SATS/ Transnet to most employees, historically.

CHAPTER FIVE

THE PENSIONERS CLAIMS AGAINST TRANSNET AND TRANSNET'S REPLIES

5.1 Introduction

As noted in previous chapters, Transnet has been taken to court, from 2006 to 2012 by members of the TTPF, and again in 2013, in a class action by TTPF and TSDBF pensioners in the Transnet Pension Action Group (TPAG). The company, originally the SAR&H, one of the first state-owned companies in South Africa, was turned into SATS in 1982, pushed to commercialise and privatise, and was then corporatised into Transnet in 1990. Transnet has engaged in various processes of neo-liberal restructuring, including privatisation, and is responsible for Transnet pensions, including those carried over from SATS.

The 1990s saw Transnet restructure its pensions, first to remove separate pension funds for white and non-white workers, and then to introduce the TPF, a defined contribution fund, in addition to the benefit funds, TTPF and TSDBF. These employer-run pensions should be seen against the larger context of a South African welfare system that includes state grants and state insurance schemes. Various steps were taken to help fund the Transnet pensions, including the 1990 issue of T011 shares, later then swapped for M-Cell shares, and the 2006 privatisation of the V&A Waterfront in Cape Town, both apparently to reduce a deficit inherited from SATS. But the government holds the ultimate liability.

It must be noted that the pensions in the TTPF and the TSDBF are quite unequal, because benefits depended on occupation and income while working, which for many years in SAR&H and SATS were closely linked to race. Also, pensions for non-whites were only introduced in the 1970s, although existing for whites for fifty years at that time. So, there are two effects: first, since SAR&H/ SATS paid many of its white workers relatively poorly, their pensions are also quite low; second, since SAR&H paid its black, Coloured and Indian workers even worse, their pensions are even lower.

At the core of the court cases are two issues: one is that pensions on TTPF and TSDBF are reported to be very low, with 45% of the pensioners earning less than the value of the state's non-contributory Old Age Pension grant by 2013, and two, that pensioners and their lawyers blame Transnet mismanagement of funds and broken promises for the situation. The 2006/2012 court cases and the one starting in 2013 aimed at compensation for pensioners, and a change in annual pension adjustments.

This chapter examines the pensioners' views, and the next one examines Transnet's replies. The 2013 case against Transnet that was filed by pensioners of both the TTPF and TSDBF, at the Northern Gauteng High Court is the focus. The last part of the thesis will evaluate the two positions, and try to use historical institutionalism to explain it.

5.2 The Situation of Transnet Pensioners

According to SATS (1989), when SATS was commercialised, Dr Moolman, the Managing Director, "embarked on a road show to explain the implications of commercialisation to SATS employees and retirees". During the road show over 80 000 employees were met by Dr Moolman. SATS along with the Minister of Transport Affairs compiled a booklet in 1989 that was distributed to SATS employees and pensioners.

According to the 2013 pensioners' affidavit (Pensioners' Affidavit 2013), during this time, SATS pensioners were made promises that "the service benefits of employees will not be affected by the formation of a company; the benefits will be adjusted only if it is for the benefit of the members of the funds; yearly pension increases would be set to meet inflation so as to ensure that pensioners do not become impoverished and discretionary pension increases will be granted in addition to the 2% pension increases that is granted on the anniversary of the pensions commencement encompassing the principles set out above". The pension benefits in existence at the time would not be reduced or altered to the detriment of members and pensioners; they would only be adjusted from time to time to assist the pensioners (Pensioners Affidavit, 2013).

According to Benwell (2010), the other service benefits that were supposed to be unaffected by the formation of SATS included the "medical aid, travel, housing and

leave benefits”. According to SATS, in 1989 black, Coloured and Indian employees and retirees were also promised that within two years, they would have full access to the medical aid, like white pension members. But SATS did not really explain the implications of the policy decision to commercialise SATS, and SATS employees did not fully comprehend the effect of this process on their pension funds, and were only informed of positive outcomes (Pensioners Affidavit, 2013). One can therefore conclude that the pensioners were misled or misinformed.

It has been widely reported that, when Transnet inherited the pension funds from SATS, it also inherited a deficit of R17.2 billion (Salanje, 2002; Pensioners Affidavit, 2013). According to Benwell (2010), the investment principles of the apartheid government for the funds led to losses being experienced by the SATS funds. When the Transnet pensions were restructured into 3 funds in 2002, most existing pensioners transferred into the TSDBF, resulting in the new fund inheriting most of the assets, liabilities and obligations owed to the pensioners. According to van Rensburg (2014), most of the pensioners affected by issues in the TSDBF and TTPF were very elderly people, leading their number to decrease from 103 089 in 2000, to 66 000 pensioners in 2013, due to deaths.

It is in the 2000s that the pensioners started to report hardships. Their first complaint was that annual increases were set at 2% annually, which a cut in real terms given that inflation is usually at least 6% (Benwell, 2010). This was (they claimed) different to the situation before 2002, it being claimed “it was only in 2002 that Transnet restricted the annual increase to the 2% as highlighted in the fund rules”. This was seen as breaking SATS and government promises that “benefits will always be adjusted so as maintain the inflation” adjustments (Benwell, 2010).

This is the background that explains why it was that “more than 80% of pensioners earn less than R4 000.00 a month and 62 % earn less than R2 500.00... 45% of the pensioners earn less than the state’s ordinary old-age pension” by 2013 (Geysers and Coetzee, 2013). (However the low pensions cannot simply be blamed on below-inflation adjustments, since the pensions started at a low base already, given that many pensioners were relatively low-income workers at SAR&H/SATS/ Transnet, including white workers, with other workers even worse off).

Second, in the mid-1990s, Transnet apparently decided to reduce the “funding of the

medical benefits of the pensioners” with falling co-payments and less coverage, through Transmed, resulting in pensioners funding almost “40% of their medical bills” from their pensions, an additional pressure (Benwell, 2010). Benwell (2010) states that Transnet froze the medical subsidy at R213.00 in the mid-1990s. SATS, however, had reportedly promised not to change its monthly contribution rates, keeping pensioner co-payments on medical bills at 25%. Rising co-payment rates and falling coverage obviously worsened the financial situation of the pensioners, as they ended paying more than they had initially thought, and having to do so from shrinking real pensions.

As a result of these difficult conditions, pensioners had to endure “reliance on charities to survive, the humiliation of selling their houses and being thrown out of retirement homes due to the lack of payment on their behalf; and the embarrassment of moving in with their families”. This was very different to what they had hoped. Pensioners retired thinking that all was well with their pension funds, since they were promised by SATS and Dr Moolman that “as employees they will meet their future with peace of mind” (SATS, 1989).

Rather than being free to enjoy their retirement, many pensioners felt sufficiently aggrieved to take their former employer to court in 2006 and 2013. The move to legal action only began after various attempts to raise the issues failed. The TSDBF board held a series of meetings around the country, where the pensioners always voiced out the same grievances with the pension income they were receiving. These pensioners feel cheated; they feel that the company they have helped build has deserted them. Fundamentally, they are arguing for annual pension increases that match inflation, which was the apparent commitment of SATS and the government (Benwell, 2010). Further, the state is the shareholder in Transnet, and is the guarantor of the two benefit funds finances.

5.3 Earlier Successful Pensioner Cases against Transnet

On 30 November 2004, various cases by former members of the TTPF, and former employees who left Transnet between the years of 1996-1999, were combined into one case by order of the High Court of South Africa (The Public Protector of South Africa, 2013). The pensioners were challenging the pension benefits they had received since their retirement. They asserted that based on a formula calculated by

an actuary working for Transnet, they were actually being 11% underfunded by the pension fund (The Public Protector of South Africa, 2013).

The main grievance for this lawsuit was the formula that was used by the actuary to determine pension benefits of these retired employees. The key issue was the benefits due to the pensioners. The Public Protector of South Africa (2013) stated that the actuary could only make a recommendation to Transnet on its pension payments, but that Transnet had to act in line with “the rules of the fund and the spirit of the defined benefit fund” (The Public Protector, 2013). The Public Protector further stated that in a defined benefit fund, benefits that are paid to pensioners do not depend on the “financial position of the fund which, if inadequate, has to be supplemented in accordance with the rules of the fund”. Transnet had actually reduced the pension benefits, contrary to the rules and spirit of the TTPF fund. Judge Goldbatt therefore ruled in favour of the pensioners by asserting that “the reduction of the pensioners’ benefits was contrary to the funds’ rules” (Public Protector of South Africa, 2013).

There was another case where Transnet was also found guilty of violating its pension responsibilities. A case by more than 357 Transnet workers retrenched by Transnet between the years of 1997- 1999 went to court (South African Legal Information Institute, 22/06/2012). Transnet argued that the pensioners were paid according to the formula determined by the actuary, but Judge Boruchowitz of the South Gauteng High Court concluded that Transnet and their Trustees had no right to change the defined benefits. Transnet was ordered to compensate the pensioners the money that was owed to them, along with paying the legal costs of the pensioners (South Africa Legal Information Institute, 22/06/2012).

5.4 The Current Case: Grievances, Explanations and Claim

On the 26th of February 2013, two pensioners from the TSDBF and TPF launched an application to certify a class action against their pension funds; and against Metropolitan Retirement Administrators, which is responsible for administering these funds; Transnet; the Minister of Public Enterprises, the Minister of Finance and the President of the Republic of South Africa (Transnet Affidavit, 2013). The pensioners were seeking financial compensation from Transnet for losses in pension incomes, and were arguing that, if Transnet could not honour its obligation towards the pension funds, the state will be called upon to honour its obligation.

The class action represents members of the Transport Pension Fund that belong both to the TPF and TSDBF. As previously discussed, the class action group is not the first group that has taken action against Transnet. A group called Transnet Pensioners Action Group, or TPAG, is the heart of this movement:

TPAG was formed by concerned pensioners in Durban. Another informal group called the Wonderboom Group in Pretoria first approached the FF+ for legal assistance. Before this we were approached by an individual pensioner in Bloemfontein after which we took the matter to parliament. During the parliamentary process [see below – NG] the Wonderboom Group approached us to take the matter further should the parliamentary route hit a brick road, which it did. After we started the legal process TPAG also approached us to join in the fight (interview: Adv. Alberts, 2014).

According to Venter (2014), after the two pensioners were given the go-ahead to institute a class action, they filed on the 27th April 2013, along with other 64 000 pensioners, resulting in 66 000 pensioners filing a class action against Transnet. According to Advocate Alberts of the FF+ (interview, 2014), the majority of the pensioners that actively joined the class action are white, but whites are only around 55% of TPF and the TSDBF members, meaning many other people also participate in and potentially benefit from the case.

There are two parts to the pensioners' claims. First, they argue that Transnet has gone back on commitments made by SATS to ensure proper benefits are paid. Underlying these problems (they argue) is a pension fund deficit inherited from the SATS years and the unwillingness of Transnet or the government to address this deficit, and a series of poor decisions by Transnet (Pensioners Affidavit, 2013). Since Transnet is the legal successor of SATS, with all its assets and liabilities and obligations, it is responsible for managing the pensions effectively. One pensioner saw this as a statutory guarantee, "a law that will not allow Transnet to retract from their liability" (Pensioners Affidavit, 2013).

Also, according to the pensioners' affidavit (2013), Transnet's and the state's refusal to pay the outstanding legacy debt has been detrimental to the livelihood of these pensioners. The pension fund trustees are also accused of a "wide range" of rule

amendments that were not for the benefit of the members of the fund. The pensioners' affidavit (2013) states that the changes made include to "rules at the death of the pensioner benefits payable to spouses, children and beneficiaries were decreased; the scrapping of the obligation by Transnet to pay to the fund annually all expenses in connection with the administration of the fund unless such expenses have been provided for in an annual budget prepared by the fund and approved by Transnet; the changing of the remarriage rule precluding [remarried] spouses of pensioners receiving death benefits; bonus payments to pensioner members [at] the discretion of the board but only from the surplus funds available; minimum pension payments [at] the discretion for the board and the insertion of a new method of calculation of benefits".

According to the pensioners' affidavit (2013), before such decisions can be made, pensioners "have a legitimate expectation that they would be heard and make representation if any amendments are proposed which are detrimental to the members, but these rights were not afforded to the members". Therefore the new rules are not legitimate – besides being prejudicial to pensioners.

Also, states the pensioners' affidavit (2013), section (3) of rule 3 of the TSDBF asserts that the funds' object is "to maintain and regulate a fund from which benefits to pensioners or their dependant shall be paid and for whose benefit this fund is established", whilst section (2) of rule 9 states that " the board may take many actions including the control of the finances and the administration of the fund, not specifically provided for in these rules that may be necessary to achieve the objects of the fund". This means the board of trustees may make decisions to increase spending, as long as it is for the benefit of the pensioners and members. The pensioners have argued that the most critical part of the rule amendments agreed by the trustees is that they did not include provisions to "counter the effect of inflation" (Pensioners Affidavit, 2013).

The second part of the class action centres on explanations for the dire situation of the pensioners. This blames the below-inflation annual increases, but insists that falling real pensions, the medical aid problems, and so on, reflect deeper problems of "unlawful" behaviour by management. Specifically, the pensioners claim in their affidavit that the TSDBF has been ruined by "unlawful transactions at the approval

of both the Minister of Public Enterprise and Finance, which resulted in the fund being stripped of its cash flow and assets making it difficult for the fund to provide benefits for their pensioner members and beneficiaries of the fund” (Pensioners Affidavit, 2013). Since the TSDBF is a pensioner-only fund with no working members, it is funded by investment, and Transnet is obliged to meet any shortfalls; in cases where it cannot do so, the state has to honour the guarantee and fund this defined benefit fund (Pensioners Affidavit, 2013).

The big issue here is how the investments were managed, specifically, the T011 funds, issued as shares to the value of R10 394 billion in 1990 to deal with a SATS deficit (Pensioners Affidavit, 2013). Lawyers Geysers and Coetzee (2013), state that these shares were “issued with a fixed interest rate of and with a coupon payment of 16.5% per annum, and payable monthly with a relief date of 31 March 2010”. They claim that the issue of T011 stock resulted in a decrease of the claimed pension fund shortfall from R6.5 billion to R3.2 billion (Geysers and Coetzee, 2013).

According to the pensioners’ affidavit (2013), this T011 stock was central to the pension funds’ assets, and was also guaranteed by the state. But instead of this continuing to 2010, it was ended before its time. In February 2001, the T011 shares were cancelled and exchanged for shares in the M-Cell cell phone company. At 31st March 2001, M-Cell shares had a market value of R1 395 billion, much less than the T011 bond stocks (Pensioners Affidavit, 2013). The swapping of the T011 bond stocks for the M-Cell shares resulted in a drop in asset value from R4 869 to R1 395 billion, meaning a loss of R3 474 billion for the Transnet pension funds (Pensioners Affidavit, 2013). The pensioners claim that the swap that took place in February 2001 was made without the approval of the board of trustees (Pensioners Affidavit, 2013).

Then, in 2006, the M-Cell shares were sold for an even lower amount, and the proceeds were apparently placed in the TSDBF. The pensioners claim that this sort of behaviour is an example of the trustees acting in the interest of Transnet, not of its ex-workers: the cancellation of the T011 saved Transnet “R1,2 billion per annum in interest and R7,3 billion in redemption payments” (Pensioners Affidavit, 2013). Further, the pensioners also claim that Transnet has been using surpluses from the

pension funds, up to 40% for other purposes, although it has no authority to do so (Pensioners Affidavit, 2013).

Therefore, the claims for class action filed by the pensioners (Pensioners Affidavit, 2013), are not just “a claim based on the failure by the trustees of the fund to comply with the substantive reasonable pension benefit expectation of members in respect to pension increases granted to pensioners set out above”, but claims against a supposed SATS-originated “legacy debt” in the TTPF and TSDBF of R79, 963 billion, against Transnet and the pension fund trustees for the T011/M-Cell share swap, against Transnet for the repayments of “surpluses” that Transnet has allegedly used elsewhere, and claims against inappropriate trustees’ behaviour. According to one of the pensioners’ lawyers, Mrs Wynanda Coetzee, “as at 31st March 2013, the legacy debt owed to the TPF with 12% per annum compound interest has grown to R34, 211 billion, whilst for the TSDBF as at 31st March 2013 was R45,752 billion” (Geysers and Coetzee, 2013).

5.5 More Details on the Pensioners’ Claims

There is some evidence to back up elements of the pensioners’ version of events. Dr Moolman, the former General Manager of SATS and former chairman of the Transnet pension funds, has deposed an affidavit stating that “Transnet Board and the State should redeem the [pension fund] debt as it seriously jeopardised the financial viability of the both funds” (Dr Moolman Affidavit, 2013). But it is not clear that this confirms the class action suit’s calculations that there is a TSDBF fund deficit of R45 752 billion, due to the “state’s prolonging failure to honour their obligation towards the pension fund and avoiding the interest payments after 1 November 1999”, and one in the TTPF of R34 211 billion (Pensioners Affidavit, 2013).

In 2008, the FF+ raised the issue of the Transnet pensioners on the TSDBF and TTPF funds in parliament. The issue was referred to the Parliamentary Portfolio Committee on Public Enterprises. A task team was selected by the committee to look into the problems of the pensioners, of which several recommendations were made in an effort to solve the pension funds challenges.

The task team met with Transnet, the Department of Public Enterprises and the Treasury, and “several interested parties” several times (Pensioners Affidavit, 2013).

According to the pensioners' affidavit (2013), the committee asserted that "because of the injustices of the past a funding solution needed to be affordable, fair and one that did not jeopardise the future of the pension fund". This committee asserted that a viable funding solution for this fund would be the one that addresses these objectives: "ex-gratia payment to compensate pensioners for the low amounts paid out in the past; increasing the base pension of the pensioners; and an increase policy to be applied going forward" (Pensioners Affidavit, 2013).

According to the Pensioners' Affidavit (2013), the Committee further requested that both Transnet and the National Treasury should make "an injection of R1, 963 billion into the fund, which was found to be affordable and will be a funding solution for the fund as it will pay an ex-gratia payment of 5 months pension; a base upliftment of 3.21% and a 75% of Consumer Percentage Index annual increase going forward on the 3.21 % uplifted base".

However, to date these proposals have not been implemented. Such proposals fall clearly within the spirit and the letter of the regulations for defined benefit funds, but would require substantial additional spending by either Transnet or the state, its shareholder, and this is unlikely in the neo-liberal context of austerity and budget cuts, as well as the severe financial situation of Transnet itself. Failing to pay in extra monies helps the state and Transnet balance their books, but at the cost of pensioners. These recommendations certainly bear out the case that the pensions are too low, and that the relevant authorities have failed to meet obligations to increase them.

More support for the pensioners comes from the judge who gave the go-ahead for the 2013 class action. Judge Ephraim Makgoba of the Northern Gauteng High Court, after enabling the class action, stated that his reason was that pensioners, regardless of age and race, had one thing in common, and that was that, they were "victims of official excess, bureaucratic misdirection and what they perceive as unlawful administration methods" (van Rensburg, 2014). He gave the applicants *locus standi* for bringing the application against the respondents, despite what the respondents might think.

5.6 Power and the Annual Pension Increase Policy of Transnet

Prior to August 1999, there was no formal written pension policy that specifically stipulated a certain annual pension increase. The pensioners' affidavit (2013) states the "*average* pension increase prior to the commercialisation of SATS was 11.3%". The pensioners took this practice as a confirmation of a policy of inflation-linked increases:

It is accordingly clear that a practice was established in this period that the increase would take cognisance of the policy that increases would never fall below 70-80% of the original value of the pension at retirement (Pensioners Affidavit, 2013).

It is also stated that the Transnet pension funds also annually adjusted pensions upwards from 1991 to 2001, a policy that was also applied by SATS prior to its commercialisation, to provide reasonable benefits for pensioners (Pensioners Affidavit, 2013). This is evident in an "average pension increase of 7.1%", somewhat above inflation (Pensioners Affidavit, 2013).

However, from around 2000, they claim, Transnet started only granting 2% increases, and amended rules in a way that "saw the benefits of the new pensioners increasing to 2% annually for the first 3 years following retirement" (Pensioners Affidavit, 2013). During this period, the pension amount of the widows pensioners was allegedly reduced from 80% to 70%, and pensions were "determined on the salary earned during the last year as a pensioner instead of the salary of the last month prior to pensioning" (Pensioners Affidavit, 2013). Pensioners claim a steady decline in adjustments:

... [a] progressive weakening of the pension increase assumption from the drop in provision from 7.5 % per annum to 5% per annum in 1999 and then from 5 % per annum from the third year after retirement to 2% per annum... to the detriment of the pensioners and particularly long-retired pensioners...

The pensioners' affidavit sees these steps as direct result of the "Transnet refusing to appropriately deficit the legacy debt" from SATS, or "alternatively call on the state to invoke the guarantee set out above" (Pensioners Affidavit, 2013).

These measures were done, not with pensioners' interests in mind, but to enable an "apparent improvement in the financial position of the fund[s]". An actuary who advised the pensioners with their application to court claimed the "members of the fund would have been awarded full inflation increases if it were not for the policy changes that were done by Transnet to only favour Transnet" (Pensioners Affidavit, 2013). It was "a policy of systematic reduction of benefits of members to free Transnet from allocating additional funding" (Pensioners Affidavit, 2013).

Procedurally, these steps were "unilaterally implemented despite ... repeat requests of individual members" (Pensioners Affidavit, 2013). The pensioners believe that Transnet is aware of the bad effects of its policies, but works on "actuarial assumptions that the members would all have passed away in a relatively short period and the problem would eventually be solved", ignoring how this "attitude has caused untold misery amongst pensioners" (Pensioners Affidavit, 2013). It also ignored an actuarial report that "a form of protection from inflation for the pensioners benefits should have been provided" (Pensioners Affidavit, 2013).

The absence of real consultation at this stage was matched by complaints hitting a "brick road" (interview: Adv Anton Alberts, 2014) when raised in parliament by the FF+ and then the Parliamentary Portfolio Committee on Public Enterprises. It also seems that pensioners did not have much initial representation on the boards of the TTPF or the TSDBF and no real possibility of later appealing for remedies in terms of the rules of the funds. According to one source (interview: Adv Anton Alberts, 2014).

The 2% p.a. increase cap was kept... the main reason for the impoverishment of the pensioners over the years. The funds were ring fenced away from the Pension Funds Act that provided remedies, such as the Pension Funds Adjudicator, in case pensioners were unhappy about their fund's management. The members did not have elected representation on the funds until 2007; Transnet appointed the trustees and they complied with Transnet's instructions that benefited Transnet and not the fund members.

In the application to court by the pensioners, it was argued that Transnet has failed in its responsibilities to its pensioners by not calling upon the state to honour their obligation to members of these defined benefit pension funds:

This conduct of the state to fail to honour the guarantee and the failure of Transnet to pay the legacy debt which owed to the funds resulted in a loss to the funds and is manifestly unconstitutional of a state which reverses the existence of a constitutional state. The conduct is therefore in conflict with the principle of legality (Pensioners Affidavit, 2013).

The state's failure to address the problems with the pension fund, irrespective of numerous requests to adhere to the rules and spirit governing the funds, thus meant the state failed its constitutional responsibility to the fund and its members. The pensioners' application to court asserted that it was not only the state that failed its constitutional responsibility towards the pension funds, but also that specific Ministers had failed their responsibilities by not complying with the rules of the fund.

The FF+ has played an enormous role supporting Transnet pensioners in their quest for financial relief, insisting that claims of instances of maladministration need to be addressed, so that the funds can be for the benefit of intended recipients. Advocate Anton Alberts, a FF+ MP, argues that none of the financial measures that matter for the livelihood of the pensioners have been met; the pensioners are being treated unjustly (interview: Adv Anton Alberts, 2014):

In general, they are not receiving the benefits promised to them in terms of a living income/wage that keeps track of inflation. Their medical aid, Transmed, is also deteriorating fast, shedding benefits yet increasing costs. The pensioners were also promised the best medical aid. None of this has realised.

For Alberts, the fact that the court of law has approved the pensioners' application for a class action is "wonderful and tragic" at the same time:

It is wonderful and tragic. Tragic because it should not be necessary for these groups to be formed, Transnet as a SOE [state-owned enterprise] should set an example in complying with its Constitutional duties.

However, in the face of this injustice it is great to see citizens rising up and claiming their rights.

However, as a result of the “injustices”, some have ended up committing suicide or being homeless, simply because they cannot afford to pay rent or bonds. Transnet’s failure to take care of its pensioners is shameful:

It is a fact that the hardships inflicted on these people have been horrendous. Most were middle class – or lower middle class - when they were employed. Some, faced with old age and sickness, no prospect to find work or the ability to work, and too ashamed to ask for help, take the ‘easy’ way out [suicide – NG]. Some can’t afford their homes and find themselves destitute. There are also those that end up in informal settlements (interview: Adv Anton Alberts, 2014).

Given this situation, the pensioners want Transnet and the government held accountable, and that the pension scheme overhauled. According to Alberts (interview, 2014), what they really want is to have their incomes increased:

They would like to see an injection into the funds so that everyone’s income rises at least 300%. The 2% rule must make way for inflation-linked annual increases and ad hoc bonuses should be paid when any surpluses are available.

5.7 Controversy around the V&A Sale and the T011 Bond Swap

The core claims around alleged Transnet mismanagement deal with how money in the pension funds has been used. The first issue, already noted, was the issue of the T011 stocks. According to the pensioners’ affidavit (2013), these were “fixed interest stocks that were guaranteed by the state with coupon payments of 16.5 % per annum”, apparently issued in 1990, to last to 2010, as a way of dealing with funding shortfalls in the now-united Transnet Pension Fund. The shares, it is claimed, should have gone to the TSDBF, when it was formed, but unexpectedly they were swapped in March 2001 for M-Cell shares (Pensioners’ Affidavit, 2013). As previously noted, the T011 stocks were worth R7.7 billion, whilst the M-Cell shares that it was swapped with, was worth R75 million and had a market value of R1 395 billion. This decision led to a drop in

assets value from R4 869 billion to R1 395 billion which resulted in a loss of R3 474 billion for the Transnet pension funds (Pensioners Affidavit, 2013). Then in 2006, the M-Cell shares were sold, for R4 595 billion making a net profit of R1.1 billion (Pensioners Affidavit, 2013).

This did not make any business sense, and at best was bad management. That the trustees and Transnet made the decision without the knowledge of the pensioners, shows what little control the pensioners had over their pension funds. Although the pensioners' affidavit claims the proceeds went into the TSBDF, others have another view: "The M-Cell shares that the fund received ... was never placed in the fund, but in a separate trust, so it truly represented no real swap" (interview: Adv Anton Alberts, 2014).

Why was the decision to swap shares made? According to the pensioners:

This move was orchestrated by Transnet in order to enhance Transnet's balance sheet once again at the expense of the pensioners of the fund. It is inconceivable that the trustees had acted in compliance of their fiduciary duties towards the fund and the members of the fund (Pensioners Affidavit, 2013).

This meant that Transnet wanted to appear as a profitable company, and for a company to make profit it has to decrease expenses, debts and move resources into activities generating new income. Further, it was claimed:

The state and Transnet have been reaping the benefits of the mismanagement of the fund by the trustees, despite the fiduciary duty of the trustees requiring them to act in the best interests of the fund and the members of the fund, and not only to the benefit of the employer. Despite the implementation of this scheme of arrangement the fund remained in an unsound position (Pensioners Affidavit, 2013).

This argument is not that convincing at this stage, since it is not clear how a loss of nearly R3 billion in assets would "enhance Transnet's balance sheet once again". If the Transnet pension funds did inherit a major shortfall from SATS, and if this was offset by the T011 shares, then trading these shares for others of less value would have increased the funds' liability. It seems likely that some other reason must have been at

work, since such a swap would not appear to obviously enhance Transnet or allow it to be reaping benefits.

It is also claimed that “this transaction was never given permit by the trustees. The sale of the shares was accordingly unlawful” despite having Ministerial approval (Pensioners Affidavit, 2013). It is not possible to judge this before the court hearings take place.

One development, not central to the class action, interesting to consider, is the claim that “Transnet uses pension fund assets to its own advantage” in other ways (Pensioners Affidavit, 2013). At issue is the 2006 sale of the V&A Waterfront, a property majority-owned by Transnet pension funds (Dludlu, 2008). It has been claimed that the revenues from the sale were not all injected into the fund (interview: Adv Anton Alberts, 2014):

Transnet only paid 60% of the revenue to the fund. It retained the other 40% as loan from the fund and has still not paid it back.

What would need to be established, however, is whether Transnet took the money not as a loan (which could help generate revenue through interest, and is in principle no different to any other investment of pension funds), but as spending money. The facts here are also not clear, and may only emerge at the court hearings. One can speculate that fraud or misuse has been committed with the pension fund, but this can only be pronounced by the court. What is clear is that there was bad management of shares as funds lost money.

Since the pensioners were not directly represented in these decisions, they had few ways to affect the outcomes, or to make changes or amendments to funds’ rules; this created a situation for their demands to be ignored (Pensioners Affidavit, 2013). This shows a sad situation, how the very people that the pension funds were established for, do not have much say in the matters that concern them, with awful outcomes:

The upshot of the Trustees failing to consult the members on these drastic steps is a blatant failure of the fiduciary duties by the trustees as it is not only in conflict with the rules but also in conflict with the principle of legality (Pensioners Affidavit, 2013).

5.8 Transnet’s Response to the Financial Status of the TTPF and the TSDBF

Transnet effectively denies all the claims made against it, and core to this position is its fundamental insistence that neither the TTPF or the TSDBF are in debt, since the “TSDBF at inception was in a sound financial position and continues to be in a good financial position in that it currently has a surplus of R2 256 000 000.00 as evidenced by its actuarial report as at 31 March 2013” (Transnet Affidavit, 2013).

Instead of mismanaging the funds, Transnet executives insist “Everything of the pension fund, goes to the beneficiaries, Transnet doesn’t touch the money” (focus group: Transnet Executives, 2014). Rather than using the pension funds to assist Transnet, the opposite is true, as the company accepts its responsibility to ensure the funds meet their obligations:

The reason the TPF [Transnet Pension Fund] managed to do what it did was because Transnet took the guarantee for it. Therefore if ever the funds could be having a deficit, [such] that they could not meet the benefits payable to their pensioners, the company will have to take money from the balance sheet to fund the pensioners.

This claim was also supported by Mr Tshediso Matona, a Director-General in the Minister of Public Enterprises, who submitted an affidavit on behalf of the Minister in 2013. He asserted that the allegations brought forward by the applicants in the class action suit, that the funds were in a perilous state, were incorrect. The interests of the members are protected by the funds, which had always met their obligations, despite the alleged deficit:

From my knowledge Transnet has never been called to inject money into the funds due to its inability to fulfil its obligations towards the pensioners. Both of these funds are currently accumulating surpluses, confirming that there has been no deficit. Since both of these funds can meet their obligation, the minister has no obligation to pay any amount into the funds.

This seems accurate, although it does not deal with how the “obligations” to the pensioners were defined, and by who, and the extent to which this took place within the spirit and rules of defined benefit funds. A Transnet executive stated “Transnet has never refused to pay money into either of the funds when called upon to do so by the

funds” governing bodies (focus group: Transnet Executives, 2014). However, as the pensioners have little say, this does not mean pensioners’ demands are being heard.

Transnet added that the issue of a historical debt or deficit in the SATS or early Transnet pension funds was moot: “the value of the legacy debt would now be R0 considering that the TPF and the TSDBF are now both in surplus” (Transnet Affidavit, 2013). Extra money would only be needed if the funds were not in a sound position, or if they could not meet their obligations. But since the funds reported a surplus, and always met their obligations, it was not reasonable that they should be expected to inject additional money into the funds, or that the state should be called upon to do so if Transnet could not honour its obligations (Transnet Affidavit, 2013). Transnet’s affidavit (2013) added that even the pensioners’ affidavit had never claimed that Transnet failed to pay the pensions, only that the pensions were too low. Since there was no ongoing “legacy debt” to the detriment of the pensioners, calls for this to be covered by Transnet and the state were misleading.

In fact, the claim that there was even a R17.2 billion deficit inherited from SATS (see Salanje, 2002; Pensioners Affidavit, 2013) is disputed by Transnet. Although Transnet admits that, as legal successor to SATS, it had to accept SATS liabilities, “The quantification of the so-called legacy debt is vague and untenable on the basis that it is said to be based on an actuarial valuation of the TPF [Transnet Pension Fund] as at 1 April 1990” (Transnet Affidavit, 2013). There could not have been a proper actuarial valuation at the time, since the merger of the white and non-white SATS pensions only took effect in October 1990. The main SATS obligation that Transnet inherited was simply “to inject money when the funds cannot meet their benefits payable to their members” (Transnet Affidavit, 2013). It also insists that it is incorrect to assume that the “T011 bonds were issued to help redeem the legacy debt because that is not the case”(Transnet Affidavit,2013).

5.9 Transnet’s Position on the Relationship between Transnet and Pension Funds

Another key argument by Transnet is that it is not responsible for debts or problems in the TTPF, TSDBF or the Transnet Retirement Fund, nor for the management and decisions of any of these funds. The group manager of the state-owned company insisted that “The TPF and the TSDBF are both legal entities separate from Transnet” and that the pensioners’ case was confusing the fund trustees’ duty to act in the best

interests of members, with the “duty of Transnet to pay into the funds, from time to time, and when called upon to do so, any further amounts that may be necessary to enable the funds to meet their obligations” (Transnet Affidavit, 2013; also Sigonyela, 2014). In fact, the administration of the TSDBF, as well as Transnet Retirement, was outsourced to a private company, Momentum Retirement Administrators, comprising MMI Holdings Ltd (80%) and Kagiso Tiso Holdings (Pty) Ltd (20%) (Momentum, undated C).

Therefore, Transnet also insisted that, even if the funds had major debts, “it is not the duty of Transnet to pay the debt of the funds, as it is not the primary debtor of the financial obligations” (Transnet Affidavit, 2013). It is only the guarantor of the funds, when they are unable to meet their obligations, and “Transnet and SATS have never in their history” had to act in this way (Transnet Affidavit, 2013).

The same argument applies to the controversy around the swap of T011 bonds for M-Cell shares in 2001: even if there was a loss from this, the transaction was the responsibility of the boards of the relevant funds. Therefore, Transnet argues: “The applicants [pensioners in 2013 case] have failed to set out any facts establishing a liability on the part of Transnet for what is only described as a loss which resulted in a drop in the asset value of the TTPF as at 31st March 2001” (Transnet Affidavit, 2013).

Here there is a difference in fact, not just a different interpretation, between the two sides. Transnet says the funds should be considered responsible for any losses incurred in the swap, while the pensioners say the swap that took place in February 2001 without the approval of the board of trustees was because of Transnet (Pensioners Affidavit, 2013). This is an issue that cannot really be clarified until the court hearings. If Transnet is correct, then the idea that it engineered the swap for its own reasons falls away. But either way, the fact is the swap seems a very bad decision, as it lost several billion rands.

The insistence that Transnet is completely legally separate from the TTPF and the TSDBF was used by Transnet to explain why it did not take up the recommendations of the task team set up by the Parliamentary Portfolio Committee on Public Enterprises. Simply, the recommendations were not legally binding on Transnet (focus group: Transnet Executives, 2014). They could have taken action, if instructed by the pension funds’ trustees, but if they, as Transnet, imposed any changes “as directors they would

have acted reckless on behalf of Transnet”. Also, the task team proposals were completely unrealistic for the funds, which “cannot go and approve something that they are fully aware that they do not have the money for” (focus group: Transnet Executives, 2014).

Transnet argues that the claims of Transnet mismanagement of the pension funds are incorrect, since Transnet has no control over the funds: therefore they cannot coerce the trustees to make decision or introduce certain policies that are for the benefit of Transnet (Transnet Affidavit, 2013). If Transnet does not control the funds, who does? Transnet insists that the TTPF and the TSDBF are controlled by their respective boards of trustees. While Transnet was represented, so were members of the respective funds, “either through trade union representatives” for those still working, or through “representatives who were directly appointed by the pensioners, beneficiaries and members” (Transnet Affidavit, 2013). This also means that the pensioners had a say in any amendments to the rules of the funds. This does not clarify, however, the relative weight of the parties, when pensioners became represented and how their representatives were chosen and mandated.

5.10 Transnet’s Position on the Issue of the Annual Pension Increase Policy of Transnet

Transnet does not deny that the TTPF and TSDBF apply a policy of only granting 2% annual increases, but instead insists that this is a long-standing practice, going back to SATS days. Claims that annual increases were higher before the 2000s are therefore seen as incorrect. Transnet argues that its funds grant pensioners a 2% annual increase simply because this is in their rules. When the two SATS pension funds, for whites and “non-whites”, were merged in 1990, the rules of the new Transnet Pension Fund clearly stated in section 32 (7) that “The pension received by a pensioner, including a widow or widow pensioners, shall be increased by 2% compounded annually, for each completed year in respect of which the pension has been or is received”. When the TSDBF was established, this rule was simply carried over (Transnet Affidavit, 2013).

Transnet claims the 2% per annum increase policy goes back to the 1971 Railways and Harbours Pensions Act for white members, which governed the SATS pension for whites (Transnet Affidavit, 2013). The pension established for blacks, Coloureds and Indians in 1974 did not even guarantee a 2%, as increases were completely at the

discretion of the Minister of Transport, granted the power to decide from time to time how much benefits should be payable to these pensioners (Transnet Affidavit, 2013). There was no “provision in the rules of the non-whites fund ... for increases of more than 2% per annum” (Transnet Affidavit, 2013).

In other words, the 2% increase policy had always been in place in SATS and Transnet, therefore to allege otherwise is incorrect:

You know what is a defined benefit? It is when your pension benefit is defined by the rules of the pension fund. And the rules of the pension fund state that the pension fund will be increased by 2 percent, it's not a negotiated minimum. The people that say we have negotiated the 2% annual increase do not know the definition of a defined benefit fund, because the 2% rule has always been a minimum. The Act says they are entitled to the 2% increase. We have been giving them more than 2%; we have been giving them bonuses. But the bonuses are not increases; they are once-off bonuses. They are over and above the 2% statutory increase (focus group: Transnet Executives, 2013).

The higher than 2% increases that pensioners reported for the 1990s were in fact “ad hoc increases” to maintain a reasonable “purchasing power”, conferred entirely at the “discretion” of the trustees and only where “such increases are affordable” (Transnet Affidavit, 2013). This still happens, insists Transnet, which claims that the TSDBF and TTPF have authorised bonuses be “paid to the pensioners and beneficiaries of the Funds, resulting in pensioners of the two funds receiving benefit improvements of at least 70 % of inflation since 2007” (Transnet Affidavit, 2013).

Although Transnet was legally separate from the TTPF and TSDBF, it also, from time to time, paid from its own funds, “ex-gratia payments” to the “most vulnerable of its pensioners”, and stated that it has allocated R70 million in this way in September 2013 (Transnet Affidavit, 2013). This contradicts the claim of the pensioners’ affidavit (2013) that Transnet did not take an interest in such payments.

Transnet insists that it tracks and looks after pensioners in greater financial need by way of the ex-gratia payments (Transnet Executives, 2014). A key part of the pensioners’ affidavit (2013) was to mention pensioners living in very bad situations, like a “Mrs van

der Walt” who, after deductions, was earning R1 a month. Transnet argues that “the calculation of Mrs van der Walt’s net pension as alleged by the applicant, does not take into account the ex-gratia payments that Mrs van der Walt in fact received” (Transnet Affidavit, 2013). It also does not take into account ad hoc bonuses by the funds, which the Transnet affidavit said included R142 million paid to the TTPF members, and R1.9 billion to TSDBF members, with R17 million to TTPF in 2013, and R18 million in 2014, and R161 million to TSDBF in 2013, and R160 million in 2014.

Ex-gratia payments are not obligations on the part of Transnet, and do not form part of the benefits that the pensioners secure as members of the two defined benefit funds (Transnet Affidavit, 2013). Although receiving the 2% annual increase is a right, as it is forms part of the fund rules, anything other than that is not their right, or owed to them. Transnet insists that every benefit that pensioners of the funds were entitled to, according to the rules of the funds, they received. “Therefore benefits that are not from the rules of the funds, pensioners cannot be entitled to claim” (Transnet Affidavit, 2013).

5.11 Transnet’s Rejection of the Legitimacy of the Class Action Case

When the class action suit began, Transnet responded by arguing that the pensioners or their (purported) representatives were not really entitled to launch such a case against the company in the first place. This is why the matter came to Judge Makgoba at the Northern Gauteng High Court, who gave the applicants *locus standi* for bringing the application against the respondents, despite the respondents’ objections (see van Rensburg, 2014).

One of Transnet’s arguments was touched on earlier, and this is the argument that Transnet was a completely different legal entity to the TSDBF and the TTPF, and did not run these schemes, and therefore should not be pulled into the case around the funds. Transnet stated that it had no obligations towards making payments to any of the applicants, since Transnet does not represent the pension funds (Transnet Affidavit, 2013).

The applicants, as members of the TTPF fund and the TSDBF fund respectively, also had no vested rights to the assets of those funds. This view was also backed up by Mr Matona (2013), of the Ministry of Public Enterprises: in his affidavit, he argued that

“the pensioners do not have the legal standing to bring claims against Transnet where such claims relate to the administration and the control of the funds”.

Lungisa Fuzile, a Director-General in the national Treasury, made a similar argument on behalf of the Minister of Finance: no rights, including in terms of the TTPF and TSDBF rules, or the national Constitution, were infringed by the actions of Transnet or the funds, so the pensioners have never been infringed on, therefore the pensioners have no *locus standi* to enforce their claims. Pension increases were not “rights”. In fact, the pensioners bringing the class action suit had “no legal standing to take any action against the state in relation to that claim” (Mr Fuzile, 2013). The Minister of Finance wanted the court to dismiss the application with costs. The pensioners could not demand that Transnet inject money into the funds, as Transnet did not run the funds. Mr Fuzile therefore stressed that “the Minister denies each and every argument pertaining to him, his predecessors and his office” (Mr Fuzile, 2013).

A further argument was stressed in the Transnet affidavit: “there is always a group of pensioners that come forward to claim relief for the same problem” (Transnet Affidavit, 2013). The state-owned company complained that it was regularly subject to such claims by people claiming to represent all the pensioners, including a case by a member of the TSDBF, Mr Du Toit, in the South Gauteng High Court in 2010 (dismissed with costs), and in 2013, in the North Gauteng High Court, by another member of the TSDBF, Mr Gordon Thompson, who also asserted that he was acting on behalf of the members of the TSDBF in general.

A third and more controversial view, not expressed to the courts, but held by sections of Transnet management, was that the cases were being driven by “white pensioners” who believed that Transnet was discriminating against them:

There is an action, [a] class [action] because the white pensioners think we included the previously excluded non-white pensioners, by paying them their money and we did not... The pensioners believe, if we had not put in the non-white pensioners, there would have received more surplus. That is the main reason (focus group: Transnet Executives, 2014).

(It is worth noting here that the FF+ is seen by some as a conservative party with roots in Afrikaner nationalism, so its links to the case can be seen by many people as evidence of this supposed agenda).

The Transnet executives stressed that the company had only put in place parity for non-white widows, and in terms of calculations of pensions (see chapter 4). They had not actually equalised the pensions beyond this:

SATS white pensioners were already earning high salaries than the non-white pensioners; therefore their benefits were calculated based on that. There is nothing we can do on that (focus group: Transnet Executives, 2014).

When the Transnet executives were asked about fixing this problem, as it is unjust to the black, Coloured and Indian pensioners, they stated they could not fix what happened in the past, because the funds were defined benefit schemes, covered by regulations in place that determined the benefits payable to the pensioners.

5.12 Conclusion

This chapter laid out the various claims made by Transnet pensioners, against the company, including the issues that led to the 2013 class action, which is the biggest in South Africa's history. This chapter has shown that pensioners felt that the fund trustees as well as Transnet made unsound decisions, and continually ignored their concerns and claims, which led the pensioners to view the decisions made as to the benefit of Transnet, not of the pensioners. The unsound decision of swapping of the T011 bonds for the M-Cell shares of less value, and some issues around the sale of the M-Cell shares and the V&A Waterfront, have also been noted.

Until the court hearings, it would be speculative to claim that there has been deliberate misuse of Transnet pension fund resources. It is also important to note that when Transnet took over SATS pensions, these apparently had a serious shortfall, as well as inequalities between pensioners based on jobs and races. The shortfall, if it did exist, no longer exists, since both the TTPF and TSDBF report surpluses, and these have been confirmed by audits. The problem of racial inequities has not really been resolved, beyond equalisation for widows, and is built into the pension structure.

It is also clear that Transnet insists it has no obligation to restructure the pension funds, and no responsibility for their past rules, even if it has occasionally made ad hoc payments to pensioners. It also admits that the pension funds consistently pay only 2% annual increases in pensions, i.e. below inflation increases. It states that it makes additional payments solely at its own discretion, and is legally separate from the funds, although represented on their boards. What has to be remembered is that Transnet (as shown in the last chapter), is a state-owned company with severe financial problems, with a neo-liberal outlook, and that this must surely affect how much money gets put into ad hoc payments, and Transnet's (and the Minister of Public Enterprise's) reluctance to take more responsibility for the funds or to agree to proposals for substantial new investments into the funds.

While it is clear that the M-Cell shares swap was a poor decision, as it lost money, there does not seem to be evidence that TTPF and TSDBF are struggling with major debts, or benefited from such decisions.

At the same time, it is very important to balance Transnet's stress on its legal commitments and on the surplus in the funds, against the basic reality that Transnet pensioners struggle. Since even Transnet admits that they get only a 2% annual increase, with some occasional ad hoc payments, it must be stressed that a 2% increase, given a typical inflation rate in South Africa of around 7% annually, actually amounts to a cut of 5% in real income every year. Whether we date this to the Transnet Pension Fund of 1990, or the 2000 restructuring, or to 1971, this means a sharp and ongoing loss of earnings over many years. It is not reasonable to claim that this is really compensated for by occasional ad hoc payments. Even if these are factored in, the basic pensions are very low, well below the wages earned by low-paid groups like miners: "more than 80% of pensioners earn less than R4 000.00 a month and 62 % earn less than R2 500.00... 45% of the pensioners earn less than the state's ordinary old-age pension" (Geysers and Coetzee, 2013).

It is also clear that the pensioners do believe that they have been ignored. Even if they sat on the boards of the funds (see next chapter), this does not mean that the average pensioner has real control. Even the ex-gratia payments and ad hoc grants are not under pensioner control, but at the discretion of Transnet and the pension funds, respectively. It is not reasonable to think that, if the pensioners had a real say, they would have

agreed to an annual cut of 5% of real pension income over many years, or have resorted to a series of court cases if they felt represented.

CHAPTER SIX

FINAL EVALUATION OF THE CONTENDING VIEWS, AND CONCLUSIONS

6.1 Introduction

Earlier chapters of the thesis have discussed the development of pension systems in South Africa, and of state-owned companies, and how these were shaped from Union in 1910, when SAR&H was formed, to apartheid in 1948, to the transition in 1994, by the larger society. These chapters have indicated how SAR&H was restructured from the 1980s, first as SATS, then as Transnet, by neo-liberal policies like commercialisation, corporatisation and privatisation, by larger conflicts over power, by the decline of the apartheid “bloc” and the rise of an ANC-led new “bloc”, and so, also by a shift from apartheid, to a reformed apartheid, to a post-apartheid period with a bill of rights and BEE policies.

In this final chapter, the thesis will, on the basis of the evidence currently available, evaluate the two sides of the controversies around the Transnet pension funds, and more specifically around the TTPF and TSDBF, which are defined benefit funds (not defined contribution funds, like the later Transnet Retirement Fund). It is noted that some parts of the controversies just cannot be assessed until the ongoing class action court case takes place. But with what is available, the thesis will examine which views seem most convincing, and show there are problems with the arguments of both the pensioners and Transnet. Overall, however, it will also show that many of the pensioners’ core grievances are still valid and that their claims to be have been treated badly by Transnet stand. It will also argue, however, against the claim that Transnet pension funds are mismanaged or corrupted. It will then try explain the evolution of and controversies about the Transnet pension funds by using historical institutionalism, and the role of neo-liberalism.

6.2 The Issue of the Race of the Pensioners

The issue of the race of the pensioners cannot be ignored, since the history of pensions in South Africa, included in state-owned companies like SAR&H / SATS/ Transnet, is

deeply affected by the racial system around jobs, incomes and welfare. Many white Transnet pensioners from before the mid-1990s were often in low wage and sheltered jobs, and so, many get low pensions, meaning that not all the problems come from race, some come from the class inequality among the whites under apartheid.

But the situation of the black, Coloured and Indian SAR&H/ SATS/ Transnet workers was even worse, with no pension coverage before the 1970s, and lower pensions than whites because of lower wages (see e.g. focus group: Transnet Executives). Transnet leadership admits openly that historic the disparity between white and black, Coloured and Indian pensions was never removed, beyond removing discrimination among widows, making sure pension rules were consistent, and some use of ex-gratia payments for the poorest pensioners (focus group: Transnet Executives, 2014). So this racial disparity remains.

Race came up in another way, as indicated in chapters 1 and 5: many of the pensioners are white, Transnet is largely a black-run company under an ANC government, and the Afrikaner nationalist FF+, which identifies itself with the pensioners, is also seen by some as a conservative white party. At times the issue of race was inflamed by the media. For example, certain private sector newspapers claimed that Transnet CEO Molefe had been “angry” at pensioners’ claims, because the “plight of the pensioners did not concern him because they are beneficiaries of apartheid” (De Lange, 2014). Transnet insists that Molefe was misquoted in sources like De Lange (2014), and that the charge that he had no concern for white pensioners was “intentionally harmful and insulting both to the image of the Group Chief Executive, Mr Brian Molefe, and the reputation of Transnet” (Sigonyela, 2014).

In my interviews, I saw no evidence that he had this attitude either. However, it remains true, as seen in the last chapter, that the Transnet executives did believe the “white pensioners” were driving the court cases. They believed that that white pensioners were under the impression that their pensions were being given to black, Coloured and Indian pensioners, which was simply not true (focus group: Transnet Executives, 2013).

However, is this issue relevant? It may be that many white pensioners do have such views, although it must be said there is no independent study to show this, and that no such claims are made in the pensioners’ affidavit (2013). It is also true that many of the

people bringing the cases are white. But even if all the people bringing the case were white pensioners, and even if every single one held such view, it would not make the case flawed, because the pensioners would still have claims as former workers, and as citizens.

But the fact of the matter is that black, Coloured and Indian pensioners do form a large part of the pensioners represented in the class action. The proportions represented are roughly in line with the racial demography of the funds, which is out of the hands of the pensioners. Since around half the members of the TSDBF are not white, for example, improvements in pensions, or the exposing of mismanagement, would benefit these pensioners too. According to Advocate Alberts, the real problem is that Transnet has neglected the pensioners, and that Transnet is using the issue of race to mix the issues:

Transnet does not care about its pensioners and have no motivation to solve this problem. Their CEO [Brian Molefe] was quoted by a newspaper that the pensioners deserve nothing more as they were previously advantaged. Not only is this a racist comment, but exposes his ignorance as he is not aware that almost 50% of the pensioners are black, Coloured and Indian (interview: Adv Anton Alberts, 2014).

6.3 The Issue of the Income Levels and Living Conditions of the Pensioners

What is very notable in the Transnet responses is that the state-owned company actually confirms the core of the pensioners' grievances. It never denies that the pensions are very low and it states that racial inequities in basic payments remain in place. It does not deny claims in the pensioners' affidavit (2013) that widows' pensions have been reduced, or that medical aid support (currently through Transmed) has been cut. It does not deny that below-inflation adjustments take place, but even insists that a policy of a 2% annual increase (which is below inflation) has been in place since the 1970s, while the pensioners date this only to 2002.

Transnet does not dispute that the pensions are often very low, or that many members are in dire straits. Instead Transnet questions that it should be held responsible. It stresses that the funds have always met their obligations (see last chapter). It does not argue with any of the specific proposals of the Parliamentary Portfolio Committee on Public Enterprises, that there were "the injustices of the past" and a need for "an

injection of R1 963 billion into the fund” and an “*ex-gratia* payment of 5 months pension; a base upliftment of 3.21% and a 75% of Consumer Percentage Index annual increase going forward on the 3, 21 % uplifted base”: it simply says that that these recommendations are not legally binding on Transnet (focus group: Transnet Executives, 2014).

Transnet states that the TTPF and TSDBF are defined benefit schemes, and that Transnet has not changed the benefits, and is not intending to do so. That the benefits are low is admitted. In fact, when the pensioners claimed that they got an average pension increase of 11.3% before SATS’ commercialisation (1988), or that from 1991 to 2001, there was an “average pension increase of 7.1%”, and then complain that increases started to be locked at 2% yearly from 2002 (Pensioners Affidavit, 2013), Transnet corrected them. It stated that the policy of a 2% annual increase on pensions was SAR&H and SATS policy, going back to 1971, and that Transnet carried on with this approach in the 1990s, and brought it into the TSDBF (Transnet Affidavit, 2013).

Transnet admits that many pensioners face hardships, when it states that, although legally separate from the TTPF and TSDBF, it sometimes pays from its own funds “*ex-gratia* payments” to the “most vulnerable of its pensioners” (Transnet Affidavit, 2013). Also, Transnet states that it approved of the TSDBF and TTPF board trustees paying out ad hoc bonuses to beneficiaries: “These bonuses are paid to the pensioners and beneficiaries of the Funds, resulting in pensioners of the two funds receiving benefit improvements of at least 70 % of inflation since 2007” (Transnet Affidavit, 2013).

So, there is no denial, by either side, that the pensioners suffer hardships. The main arguments of Transnet are simply that the low pensions are legal and in line with TTPF and TSDBF rules, that Transnet does not have to intend to inject more money into the funds to deal with past inequities or current hardships, and that Transnet should be not seen as legally liable by pensioners (see e.g. Transnet Affidavit, 2013). The funds are not maladministered, or looted by Transnet, and Transnet is not obliged to change the funds’ rules, increase their capital, or change their benefits.

The problem with this approach is that it really does not deal with the reality of tens of thousands of former employees, who, whatever their race, worked long hard years for the state-owned company, or the spirit or letter defined benefits systems where pensioners should earn an income in line with their former salaries, adequately adjusted

over time. When all is said and done, the problem remains that in 2008 the average pension per month was R2800.00, and that “almost 40% of the pensioners” earned less than the then-State Old Age Pension of R1080.00 (Benwell, 2010), with similar figures five years later (Geysers and Coetzee, 2013). In fact, the Transnet pensions of the TTPF and TSDBF are so low, that many pension fund members could qualify for the State Old Age Pension, which is means-tested and really designed for the indigent (see South African Government, no date), despite having paid into the Transnet funds for years.

It may be that pensioners like a “Mrs van der Walt” reportedly earning R1 a month (Pensioners’ Affidavit, 2013) earned more because of ex-gratia payments and ad hoc bonuses (Transnet Affidavit, 2013). But, as Transnet clearly states, it is not under any obligation to make such payments, and the funds do not have to make such payments unless they consider the funds to have enough surplus. So these grants and bonuses cannot be seen as regular or guaranteed income.

Further, the claim by Transnet that “pensioners of the TSDBF have received an improvement of 70% of inflation” through such means “since 2007” is strongly disputed at length by the pensioners (Pensioners Affidavit, 2013). Transnet also claims that pensioners like “Mrs van der Walt” were “not the beneficiaries” but widows or dependents. Even if that was true, the fact is that the fund rules clearly stated that the benefits will be passed onto dependents, so this claim is partly incorrect. To disregard the situation of those who earn R1 per month like this is also unfair and unjust. It does not show much empathy.

At the end of the day, all of these details do not deal with the issue of right and wrong and the extent to which the two disputed funds are actually dealing with the letter and spirit of defined benefit fund obligations. It does not even matter much whether the low pensions are due to maladministration, or fraud, or bad management, or market conditions, or low past wages for white railways workers or racial discrimination against blacks, Coloureds and Indians in the SAR&H or SATS. The issue is not so much what caused the problem but how to solve it. These pensioners are old, and they should be enjoying their hard-earned money, and not be involved in battles fighting for what is rightfully theirs. And what is rightfully theirs includes a decent standard of living, in line with Constitutional rights and promises, and removing the barriers to this situation.

Even the Parliamentary Portfolio Committee on Public Enterprises that looked into the matter stated that there were “injustices of the past” that needed urgent solutions (Pensioners Affidavit, 2013). When Judge Makgoba of the Northern Gauteng High Court gave the go-ahead for the class action he was also clear that the pensioners were victims, regardless of age and race (van Rensburg, 2014).

6.4 The Issue of How Pensioners are Represented in the Pension Funds

Management

As shown in the last chapter, Transnet does not just state that it does not control the pension funds, but in fact claims that the pensioners have a real say, since members of the respective funds were represented, “either through trade union representatives” for those still working, or through “representatives who were directly appointed by the pensioners, beneficiaries and members” (Transnet Affidavit, 2013). This also means that the pensioners had a say in any amendments to the rules of the funds, and over fund policies.

There are two issues here. One is that there is some dispute as to when pensioners actually got represented on the boards. According to the FF+’s Advocate Anton Alberts, “The members did not have elected representation on the funds until 2007; Transnet appointed the trustees and they complied with Transnet’s instructions” (interview). Some news reports claim that pensioner members are not yet represented on the TSDBF board, despite its rules allowing that, and that the TTPF only got such representation in 2013 (Du Preez, 2014). (If this is true, it is unclear why this should be the case, as the TSDBF rules of 2000 specifically specially allow for four pensioner representatives, elected by ballot sent to the fund (Momentum, undated A).)

But even if pensioners were represented, the question is also whether this is really a meaningful representation. First, the pensioners dispute the Transnet claim that the company has no real power on the funds’ boards, or that pensioners have effective representation (Transnet Affidavit, 2013) for several reasons. They state that “Transnet at all material times had full control over the funds by having the right to appoint the chairman of the fund as well as 50% of the trustees and having the casting vote in the event of an equality of votes in the case of the TPF [Transnet Pension Fund] at its inception” (Pensioners Affidavit, 2013). This means they could overrule pensioners’ representatives at will. And it certainly cannot be said that Transnet, or the Ministry of

Public Enterprises, or the national Treasury or the Ministry of Finance are very sympathetic to the pensioners' complaints because it was shown in the last chapter that the forces keep denying that the pensioners have legitimate claims or cases.

Trade unions do not really represent pensioners, but their members, who are still working, and since the people complaining about the pension funds are not workers, but already pensioners, so the role of "trade union representatives" on the fund boards is meaningless to the pensioners. Further, even if pensioners did directly appoint representatives, this does not mean those representatives were consistently acting under instructions from the pensioners. There is, for example, nothing in the TSDBF rules that provides a mechanism for the representatives to take mandates from the members, or even to report back (see Momentum, undated A).

It is also clear that the pensioners do believe that they have been ignored. Even if they sat on the boards of the funds, this does not mean that the average pensioner has real control. Also it is not reasonable to think that, if the pensioners really believed that they had a real say on the funds' operations, that they would keep launching court cases or complaining through parliament. If "45% of the pensioners earn less than the state's ordinary old-age pension" (Geysers and Coetzee, 30/04/2013), then it is certain that the pensioners would have pushed changes through the boards of trustees of the funds. It is also not reasonable to think that, if the pensioners had a real say, they would have agreed to an annual cut of 5% of real pension income for many years.

The fact that pensioners get occasional ex-gratia payments from Transnet and ad hoc payments from the TTPF and TSDBF does not change this. The point is that these allocations are at the discretion of Transnet and the funds' boards, and are not rights or stipulated benefits, as Transnet has made very clear (Transnet Affidavit, 2013). Pensioners have no real control over whether these grants or payments will take place, or how much they will be. This is why the pensioners feel that they have "hit a brick road" (interview: Adv Anton Alberts, 2014), and have resorted to the courts. This was also confirmed by Judge Makgoba of the Northern Gauteng High Court who gave the go-ahead for the class action, and stated clearly that the pensions were "victims of official excess, bureaucratic misdirection and what they perceive as unlawful administration methods" and had *locus standi* no matter what Transnet thought (van Rensburg, 2014).

6.5 The Issue of Whether the Pension Funds are Mismanaged

There is, as shown in the last chapter, no direct evidence at this stage that Transnet has stripped the assets of the TTPF or the TSDBF, or that the funds suffer a huge debt. Both the funds report surpluses, and this has been confirmed by actuaries and accepted by the government (Transnet Affidavit, 2013). As stipulated in the Transnet Annual Report, 1990/91, Transnet increased its contribution to the fund from 9% to 12% in the first year. It has been reported that as early as 1998, the general Transnet pension fund accumulated a surplus of R87 million whilst in 2000 it accumulated R2 393 million (Transnet Pension Fund Annual Financial Statement, 2000).

According to the 2014 Transnet Annual Financial Statement (2014:17), by 2012 the TTPF had accumulated a surplus of R2.3 billion whilst in 2013 it was R1.7 billion, and the TSDBF on the other hand accumulated a surplus of R2.6 billion in 2014, whilst in 2013 it accumulated a surplus of R2.3 billion. The pensioners' affidavit (2013) also admits that the TSDBF was "at inception ... in a sound financial condition" and the recent actuarial reports state that this remains the case.

Further, the funds are not directly managed by Transnet, but by their boards of trustees. In the case of the TSDBF, the day-to-day management is actually contracted out to a private company, Momentum, so it's not clear how Transnet would be able to act this way, let alone loot the funds. It does sit on the boards of trustees, of both TTPF and TSDBF (see below), but does not have simple direct control.

There does not seem to be any reason to doubt that the 2001 swap of T011 stocks for M-Cell shares, to a loss of nearly R3 billion, and then the sale of the M-Cell shares, were bad management decisions. The power to make this poor decision rests with the pension fund administrators, and especially with their boards of trustees. Since Transnet is part of those boards, it does share some of the blame, but there is no reasonable ground to claim that Transnet pushed through such decision, for its own benefit, as the pensioners' affidavit claims when it says:

This move was orchestrated by Transnet in order to enhance Transnet's balance sheet once again at the expense of the pensioners of the fund.

Or that:

The state and Transnet have been reaping the benefits of the mismanagement of the fund by the trustees, despite the fiduciary duty of the trustees requiring them to act in the best interests of the fund and the members of the fund, and not only to the benefit of the employer (Pensioners Affidavit, 2013).

If the Transnet pension funds did inherit a major shortfall from SATS (which can be disputed), then losing billions by swapping T011 for less value M-Cell shares would just have made the balance sheet worse, and it is not clear, anyway, how Transnet would be “reaping the benefits” of these bad decisions.

Any claim that Transnet overstepped its boundaries is not possible to judge this before the court hearings take place. It is not possible at this stage, with available evidence, to evaluate whether Transnet was using surpluses from the pension funds, without authority (Pensioners Affidavit, 2013), or had retained 40% of the V&A Waterfront money as a “loan from the fund and has still not paid it back” (interview: Adv Alberts). It is also not possible to see whether SATS gave Transnet an actual “legacy debt” of R17.2 billion (see Salanje, 2002; Pensioners Affidavit, 2013), or to evaluate Transnet’s claim that the “quantification of the so-called legacy debt is vague and untenable” (Transnet Affidavit, 2013).

6.6 The Left-out Issue of the Role of Neo-liberalism

South Africans and their media tend to blame all the problems in state departments, state-owned companies and in the government solely on corruption, which tends to present the problems as due to a few corrupt individuals or groups. Corruption obviously plays a role in affecting how state departments and assets work, but it is only a small part of a complex picture that includes state policy and class conflicts and other factors (von Holdt, 2010). This narrow focus however is notable in the pensioners’ case against Transnet, which says almost nothing about the impacts of commercialisation, corporatisation and privatisation on SAR&H/ SATS/ Transnet, but sees the causes as Transnet management plundering the funds:

... due to the unconscionable and unlawful transactions, and at the behest of Transnet and with approval and concurrence of the Minister of Public Enterprises and the Minister of Finance, the fund was stripped of its cash

flow and assets which it required to foot the objects of the fund that is to provide benefits for pensioner members and beneficiaries of the fund (Pensioners Affidavit, 2013).

But, unless the court case reveals other evidence, this is not accurate as the two funds, TTPF and TSDBF, have an ongoing surplus and have never failed to pay the stipulated benefits, as well as some occasional ad hoc bonuses. So, a large part of the class action case rests on an explanation of the low pensions that does not really work well, and it leaves out the larger context. What a focus on corruption misses is how the larger social system, of neo-liberal capitalism and the state that implements it, combined with the apartheid legacy, and the use of the state for elite enrichment, promotes inequality and the power of ruling class elites (Hattingh, 2014; van der Walt, 2013). Put simply, if the state “plays a central role in protecting the interests of the ruling class”, with resources “skewed disproportionately towards meeting the needs of the rich” and acting as a site “by an elite to accumulate wealth”, problems in state services and delivery cannot be solved by prosecutions. Much larger changes are needed.

The focus on corruption actually distracts attention from a very substantial part of what happened at SATS and Transnet, which as shown in chapters 2 and 4, involved neo-liberal reforms. In this situation all companies have to place priority on cost-cutting, business principles and profits than on the welfare of ordinary people (Harris and Lauderdale, 2002:422). Also, South Africa still has serious economic problems, and Transnet has a massive fall in company income and deteriorating equipment, and has implemented widespread retrenchments and railways closures.

If this is the situation, it is much easier to understand why Transnet has handed management of the TSDBF and the Transnet Retirement Fund to a private company, Momentum, why it does not want to inject money into the pension funds, why it could not afford to equalise white and “non-white” pensions, and why it does not really push to change the 2% per annum pension increase. The 2% system is really what allows the TTPF and the TSDBF to have a surplus in the first place, so what happens when ad hoc bonuses are actually paid from “own savings that arise from the limited 2% p.a. rule” (interview: Adv Anton Alberts, 2014). Also:

Transnet fails to discuss the abject hardship it created in the process of attaining the surplus. The conduct of Transnet and the trustees of the

respective funds are simply scandalous and deserves judicial scrutiny and censure” (Pensioners Affidavit, 2013).

6.7 Using Historical Institutionalism to Explain Situation of the Pensioners

From a historical institutionalist perspective, the situation of the pensioners today could be explained in the following way, using class and state – not corruption – as central factors. With the breakdown of the apartheid “bloc” of classes (Greenberg, 2006), under pressure from economic and political crisis, massive union struggles and other unrest, the country veered to a transition to one person-one vote and to neo-liberalism. The path of neo-liberalism has been affected by ordinary people, where they had powerful movements like unions, but even then the trend is against the working class.

Unions have been able to slow Transnet restructuring, but keep facing retrenchments, while the Transnet services continue to deteriorate under neo-liberal pressures. But since these pensioners are former workers, they do not belong to trade unions, or if they do, they are not workers anymore anyway, so they cannot strike against Transnet or the state; many are white, and outside the ANC-COSATU-SACP bloc, and are also not very important to the new coalition, with its BEE aims. Given the larger social system, with its deep inequalities, and concentration of power in the hands of a black state elite and a white corporate elite (Hattingh, 2014; van der Walt, 2013), BEE in the context has tended to a narrow BEE, benefiting elites primarily, while the conditions of many black working class people, despite an expanded welfare system, remain poor and marked by high unemployment and costs and job insecurity. Even COSATU, which is allied to the ANC, finds itself having to fight “unrestrained market capitalism, hostile to workers interests” (Hentz, 2000:117).

But unlike COSATU members, in this situation, the Transnet pensioners have no real structural or political power and are easily marginalised by Transnet, if it wishes to marginalise them. They then have to rely on parliamentary interventions, the support of political parties, and expensive and risky court cases that take years to conclude. These court cases, though, fail to correct or examine the larger context, and rely heavily on assertions of corruption that are not proven. This leaves out the national shift to neo-

liberalism, including the strong pressure on Transnet to cut costs, all of which ties to enforcing pension rules that generate a surplus in the funds through low pay outs, refusing to inject funds to remove historic disparities between races or to boost the base pensions of all pensioners, and using technical and legal arguments to avoid the larger moral issue arising from treating people, who gave larger parts of their lives to the company, decently.

6.8 Conclusion

This thesis has tried to examine the controversy around the Transnet funds, specifically the conflict between the pensioners in the TTPF and the TSDBF, and has used evidence to try and evaluate the claims of each side. It has provided the larger context of history and policy, and of conflict and power, and made use of the qualitative approach. Many of the problems can be traced to the way that the funds were set up, the low wages of many workers involved and the racial gaps between workers, as well as major changes like neo-liberalism, which played out against larger inequalities in power and wealth, changes in which ordinary people and low paid workers had no say, but suffered the consequences in forms like retrenchments.

As SATS and Transnet were commercialised, corporatised and somewhat privatised, the decisions made affected ordinary people on harsh ways. Instead of seeing the problems in the Transnet pensions, which see many ex-workers earning less than the State Old Age Pensions, as due to corruption, this thesis has suggested that neo-liberal policies and approaches, with their profit-based priorities, are key to understanding why both SATS and Transnet implement punitive systems like 2% annual pension increases, and a failure to address racial gaps in pension payments because exploitation is seen as an innate quality of a state rather than a representation of its abuse. Power also played a role, as pensioner complaints were continually ignored, or when they went to court, were opposed strongly by Transnet and its lawyers. Transnet has a large cash flow paying for its legal expenses whilst the majority of the pensioners are poor and cannot afford much legal presentation, hence the lawyers that are representing them in the recent class action will only be paid if the pensioners win. If they lose, it is not clear how the costs or any damages will be covered.

This is a conflict for power over resources, with benefits for some groups, and not others. It is important to emphasise that the pensioners are asking for benefits that they

need, but politics and conflicts are not about right or wrong, but about power, who wins. There is a strong social justice case for redress to the pensioners, but Transnet relies instead on legal and technical arguments to evade claims. The problem is: how will the pensioners live decent lives, if the problems are not solved? Transnet asserts that they have no obligations, but what about obligations to the workers and families who gave large parts of their lives to build the company? If Transnet would take some responsibility, there could be progress, but it seems that this is not likely to be done willingly.

What historical institutionalism shows is that what policy decisions are based on, is not issues of right or wrong, but on power relations and conflicts, embedded in formal organisations, and this leads to very unequal results. This seems to explain very well the Transnet pensions' situation, as it is a reflection of how an unequal political economy influences the "generation of distinctive outcomes" in a situation where the major institutions are located within a matrix of power relations, dominated by the political and economic elites (Hall and Taylor, 1996:6).

Due to the injustices that workers were subjected to in the past, it is essential that a funding solution of a pension fund should be fair and affordable, so as to avoid any threat to the future benefits of the pensioners. Transnet should stop putting the needs of the company first, and be concerned with making profit; it should inject money to help eradicate this problem. A large amount of money would need to be injected, and Transnet needs to take care of its pensioners, as they have played a pivotal role in ensuring that the company exists today.

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Appendix A: Interview with Advocate Alberts

1. Please give a brief description of your political organisation.
2. What are the mission and visions of your political organisation?
3. How long have you been with the Freedom Front Plus?
4. How much knowledge would you say you have on the restructuring of state assets?
5. Do you think the State-Owed Companies like Transnet have played an adequate role in engineering growth in a post- apartheid state?
6. Do you think the Transnet Second Bill Amendment represents and protects workers interests?
7. It has been reported that the Freedom Front Plus has undertaken for years on behalf of Transnet Pensioners for compensation for damages, due to mala-administration of the fund. What damages are these?
8. What is your thought on these social movements that have taken a stand against Transnet? (including the two group pensioners that have successfully filed a lawsuit and won against Transnet Prior to the TPAG)
9. What grievances do these pensioners have with the pension fund?
10. How was the group created?(TPAG)
11. In which pension fund group do these pensioners belong to?
12. What trade union do they/did they belong to if they did?
13. The pensioners that took Transnet to court, are they SATS or Transnet Pensioners?(workers that pensioned prior to 1990 or later)
14. It has been reported that you once said at Pretoria Arts Museum ahead of a March that some pensioners end up committing suicide and some become homeless because they cannot afford to pay rent due to their low monthly income. Can you please elaborate on that statement?
15. Who is responsible for the legal costs of the pensioners since they can't afford to pay for their basic needs?
16. What procedure must pensioners follow when they want to report their grievances with the pension fund to your party?
17. How do these pensioners expect their grievance to be resolved?
18. How many pensioners have you represented?

19. Discuss how you have supported these pensioners.
20. It has been reported that you took Transnet to court, please briefly discuss the reasons as to why?
21. It has been reported that there are pensioners that are earning around R1 per month, which is much lower than the standard government pension for the elderly. Are these the pensioners that worked at Transnet or are these the dependants of deceased pensioners?
22. If Transnet were to pay the pensioners what is due to them, and also increase the annual 2%, wont that cause a huge dent to the financial stability of Transnet as a company or not?
23. Do you think the funds have been stripped over a period of more than 20 years?
24. Would you say Transnet is taking great initiative by paying pensioners the ad hoc bonuses and ex-gratia payments?
25. Where do you think this money comes from?
26. When Transnet sold their assets such as the waterfront, they injected the revenues to the Pension Fund. Why do you think that has not made any difference to the pension fund deficit?
27. A lot has been reported on a R7.7 billion debt that generated income of R1.2 billion that was apparently “swapped” in early 2001 for M-Cell shares worth about R1.4 billion. What do you think is the real problem with the M-Cell swapping deal?
28. Do you think fraud has been committed with a pension fund?
29. Do you think Transnet is doing enough to solve this problem?
30. Why do you think this problem has lasted this long?

Appendix B: Interview with Transnet

Background Information:

1. How much knowledge would you say you have on the restructuring of state assets?
2. Do you think the State Owned Enterprises like Transnet have played an adequate role in engineering growth in a post- apartheid state?
3. Do you think the Transnet Second Bill Amendment represents and protects workers interests?

Understanding Transnet:

1. How is it funded? Is it subsidised?
2. What are its investments?
3. If it does not receive any form of subsidy, how does it pay for its investments?
4. SAR&H had a grant allocated to them every year by treasury to cover costs, is Transnet subsidised?
5. Why was it restructured?
6. How was it restructured?
7. In terms of restructuring, who benefits?
8. What was the process of selecting the restructuring committee?
9. How many workers were retrenched in Transnet's subsidiaries such as SAA? Spoornet? Metrorail?
10. It has been reported that the workers were not informed on time. Is that true?
11. What was the procedure taken to inform the workers of the restructuring?
12. What was the process in including the black widows as beneficiaries of the pension fund of their spouses in 1998?
13. Why did it take 8 years from the time when Transnet became a tax-paying, legal entity for the black widows to be included?
14. What role did the Rothschilds Consulting Firm play in the Restructuring of Transnet?

15. State Employees were subsidised and benefited hugely on housing, pensions and even extending to holiday resorted, was it the case with SATS Pensioners?
16. With SATS, parliament approved capital expenditure of up to R2 billion. In 1986 it was R1.4 billion, and in 1988 it was R699 million.
17. Why did Transnet start to run out of money in the 1990's?

Understanding the Pension Fund:

1. Since the cancellation of T 011 debentures and the formation of the Transnet Limited M-Cell Trust failed to provide a lasting solution to the pension fund deficit, what actions has the Board of Directors of the company and the Board of Trustee taken to solve this problem?
2. Are there any future funding plans and strategies to address the TSDBF continuing shortfall?
3. Will they be implemented without compromising the interest of the members and their beneficiaries, and without affecting the company's future performance?
4. How much of a challenge did the split of the fund, posed on the board of trustees and management, and board of directors and management?

Challenges with the Pension Fund:

1. How was the fund restructured?
2. Why was the fund restructured?
3. How is it that the pension fund deficit has still not been managed?
4. A Task Team was created to solve the TPF deficit. What did it decide on?
5. Did any of the suggestions accumulate?
6. How did the deficit increase from R15.3 billion to R17 billion?
7. When was the railways and harbours pension fund for black employees created?
8. What is the average pension received by its member?
9. What was the difference in benefits between the railways and harbour pensioners for blacks and railways and harbours superannuation for whites?
10. Is it true that the SATS black workers did not entirely have pension funds, but had a system that worked as a savings scheme for them?

11. How many pensioners opted to the Transnet Retirement Fund (TRF) in 2013 and in 2014?
12. What is the company's loss as the result of compensating for the deficit?
13. Briefly discuss the loanstock T11. Where did the money come from?
14. Pensioners who filed for the lawsuits include both the minority and the majority. In your opinion, why do you think that is the case when the minority had well-funded pension fund?
15. Is the Second defined benefit fund funded by existing investments?
16. How much was the incentive paid by Transnet for members who transferred to TRF?
17. Is it true that the Transnet subsidiaries were starved of new capital by the pension fund deficit?
18. When Transnet sold their assets such as the waterfront, they injected the revenues to the Pension Fund. Why do you think that has not made any difference to the pension fund deficit?
19. When Transnet sold their assets such as the waterfront, they injected the revenues to the Pension Fund. Why do you think that has not made any difference to the pension fund deficit?
20. Many black employees worked for years only to retire on a mere pittance and that was never adequately addressed. Why is that? Why is the pension money paid to the black pensioners not the same as one paid to the white pensioners?
21. Do you think fraud has been committed with a pension fund?
22. Do you think Transnet is doing enough to solve this problem?
23. It has been reported that there are pensioners that are earning around R1 per month, which is much lower than the standard government pension for the elderly. Are these the pensioners that worked at Transnet or are these the dependants of deceased pensioners?
24. Why do you think this problem has lasted this long?

Restructuring of the Pension Fund:

1. Was the restructuring process in compliance with legal and regulatory framework?

2. Was it executed in the best interest of the members and the beneficiaries of the deceased members, as well as the stakeholders of the company?
3. Why was the Transnet Pension Fund restructured again in 2006 /2007?
4. What is the procedure of transferring members from TPF to TRF?
5. In the waterfront sale, were the proceeds used for capital expenditure?
6. Did Transnet sign a governing agreement with the pension fund undertaking to co-operate in enabling the legislation required to reclaim land for further development at the waterfront?
7. 2 % is the rule. It is neither the minimum nor the maximum. In your opinion, why do you think the pensioners have collectively responded against it, if it has always been there during the apartheid era?
8. What impact do you think the restructuring of both Transnet and the Pension Fund has had on its workers and former workers?
9. Would you say the restructuring of both Transnet and Pension Fund contributed negatively or positively on the pension fund deficit?
10. What is your view on Transnet's pension bonds worth R7.7 billion that were apparently "swapped" in early 2001 for less valuable M-Cell shares worth about R1.4 billion?
11. It has been reported that Transnet's sale of its 18% stake at R13.90 a share in MTN to Newshelf 664 in 2002 a company whose ordinary shares were held by a trust of which the beneficiaries were supposed to be MTN employees, both Transnet employees and the government benefited from the sale. How true is that?
12. Why do you think the Pension Fund debt has remained a problem for your company? Would it ever be solved?

Social Movements against Transnet:

1. It has been reported that hundreds of workers that were retrenched between 1996 and 1999 formed the Transnet Action Group (TAG), sued Transnet for return (with interest of an unauthorised 11% deduction from their severance package and in In 2006, the High Court ruled in their favour, awarding R82 million. Is that true?

2. It has been reported that in 2007, another 6 600 former employees took Transnet to court, on similar grounds as the TAG claimants: they were awarded R22 million. Is that true?
3. If all asked above is true. Then how has the pay-out to these social movements affected the profitability of the company? (Marais, 18/06/2011). Now, a new Transnet Pension Action Group is suing Transnet for the loss of income-generating assets as a result of the M-Cell swap deal, claiming R85 billion.
4. What is your thought on these social movements that have taken a stand against Transnet? (including the two group pensioners that have successfully filed a lawsuit and won against Transnet Prior to the TPAG)
5. A new Transnet Pension Action Group is suing Transnet.
 - ❖ What grievances do these pensioners have with the pension fund?
 - ❖ How do you think the Group was formed?
 - ❖ The pensioners that took Transnet to court, are they SATS or Transnet Pensioners?(workers that pensioned prior to 1990 or later)
 - ❖ In which pension fund group do these pensioners belong to?
 - ❖ Do these social movements belong to any group? If yes, are they supported by their Trade Unions?

Attempts made by Transnet:

1. What decisions have been made by Transnet to try and solve the pension fund deficit?
2. With regards to the ad-hoc bonuses Transnet has paid to their pensioners, how much has been paid out? Where does the money come from? When was the first bonuses paid out?
3. With regards to the ex-gratia payments Transnet has paid to their pensioners, how much has been paid out? Did it include both Transnet and SATS pensioners? To which group fund do these pensioners belong to? When was the first payment made? Where does the money come from?