



St. Gallen, 9 October 2020

Press Release

regarding judgment A-3829/2019 of 29 September 2020

Saurer pensioners: appeal rejected

The Federal Administrative Court (FAC) rejects the appeal of a group of retired Saurer employees. The pensioners were demanding a share of the surpluses from and greater participation in the Pensionskasse der Saurer-Unternehmungen.

The seven retired employees from the Saurer plants in Arbon (TG) claimed that the board of trustees of Pensionskasse der Saurer-Unternehmungen, the Saurer enterprises' pension fund, had disregarded the interests of pensioners from 2008 onwards. In addition, uncommitted funds had been used unilaterally and information had been denied.

Four requests

The appellants demanded unrestricted provision of information and access to the accounting documents of the pension fund. Surpluses beyond the 130 per cent coverage ratio were requested to be passed on to working members and pensioners. The pensioners also called for the appointment of a pensioners' representative to the board of trustees and the establishment of an interim administration for the pension fund management. The Ostschweizer BVG- und Stiftungsaufsicht, the occupational benefits and foundation supervisory authority in Eastern Switzerland, had rejected a corresponding appeal to the supervisory authority by the retired Saurer employees on all points, whereupon they lodged an appeal with the FAC.

No partial liquidation possible

The appellants pointed out that, since the 1990s, unused actuarial reserves, reserves and provisions had accumulated in the pension fund. These funds were to be withdrawn – in the context of a partial liquidation – and distributed to those who had saved them.

However, the FAC considers that the conditions for a partial liquidation are not fulfilled. In particular, individual departures due to retirement or death do not lead to a partial liquidation. There are no indications that the board of trustees has exceeded the legal framework, particularly with regard to the accumulated reserves. The increase in reserves and provisions appears appropriate in view of the declining number of insured working members, the risks and the need to be able to restructure the pension fund.

No right to greater participation

There is no legal or regulatory entitlement to have pensioner representatives sit on the board of trustees. The FAC also sees no reason to remove management responsibility from the board of trustees and replace it with an interim, neutral administration consisting of experts. There are no indications of breaches of duty.

The FAC also agrees with the supervisory authority on the fact that the pension fund has safeguarded the appellants' rights to information in this specific case.

The FAC rejects the appeal in its entirety. This judgment may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 355 employees (300.8 FTE) and its 74 judges (66.25 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.