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[19] The Court went further to deal with the provisions of section 187 (2) (b) of the LRA, and concluded that it was not necessary for the purpose of its judgment to deal with the question whether or not 65 years was the appellant's normal or agreed retirement age; but it went further to state, obiter, that "--- by reason of the fact that the provident fund to which the applicant (respondent) belonged stated very clearly that normal retirement age would be 65, the fact that applicant (respondent) himself did not acquaint himself with the rules of the provident fund does not justify him contending that the normal retirement age applicable to the respondent's (appellant's) employees was not indeed 65 years of age. No evidence was adduced that the applicant agreed to 65 years of age being the normal retirement age. However, by reason of the fact that the provident fund rules were incorporated in the applicant's terms and conditions of employment, I am satisfied that 65 years of age was the normal age of retirement prevailing at the respondent (appellant) company."

The appellant was subsequently granted leave to appeal to this Court against part of the judgment of the Labour Court that was averse to it.

[28] It is correct that the onus is on the appellant to prove on a balance of probabilities that there existed an agreed or normal retirement age for its employees. Mr Bidderman-Pam stated that in the respondent's letter of appointment dated 9 September 1991, it was stated that "the company will contribute the full amount of the Provident Fund membership from 1 October 1991." He further testified that the appellant's policy and procedure information booklet, which contains the terms of employment and details of the company rules, regulations, and procedures, which "govern the employment contract and are contractually binding," refers its employees to the Provident Fund summary booklet with regard to, amongst others, their retirement benefits. The suggestion here was that the fact that this booklet referred the employees to the Provident Fund summary booklet with regard to retirement benefits is a good indication that the employees would know of the retirement age of 65.