THE FINANCIAL SERVICES TRIBUNAL

CASE NO. PFA62/2025

In a matter between:

ANDERSON TRANSPORT DIENSTE (PTY) LTD	**APPLICANT**

and

WONDERBOY SHASHA	**1ST RESPONDENT**
SANLAM UMBRELLA PROVIDENT FUND	**2ND RESPONDENT**
PENSION FUND ADJUDICATOR	**3RD RESPONDENT**

Appearance for Applicant: None
Appearance for 1st Respondent: None
Appearance for 2ndRespondent: None
Appearance for 3rd Respondent: None

Date of Decision: 14 November 2025

Summary: Application for reconsideration of an order made by the Pension Funds Adjudicator in terms of which rule 9.1 of the Fund was found to be applicable and thus entitling the employee to be paid his provident fund benefits despite the pending dispute regarding his dismissal. The application for reconsideration by the employer was dismissed.

JOINT DECISION

PANEL MEMBERS: Legodi J (Deputy Chairperson) and Adv K Magano

Introduction

1. The rules of a fund are its constitution, and the doctrine of *ultra vires* applies. If the rules of a fund do not afford the fund a legal power or capacity to do something, then such purported act by the fund is *ultra vires* and accordingly null and void; and the application of *ultra vires* doctrine to a pension fund is consistent with the constitutional principle of legality. (**See, Municipal Employees Pension Fund v Mongwaketse (969/2019) [2020] ZASCA 181 (23 December 2020)** at para 42 and see also in the same matter **(CCT34/21 [2022] ZACC 9 at para 39).**

2. The order made by the Pension Fund Adjudicator on 10 July 2025 in terms of which the Sanlam Umbrella Provident Fund (**the fund**) was ordered to accept the claim form for the withdrawal of provident fund benefits of Mr Wonderboy Shasha **(the complainant**), without the stamp and signature of Anderson Transport Dienste (Pty) Ltd (**the employer**), is the subject of an application for consideration before us.

3. At issue, the question is whether the Adjudicator was correct in rejecting the employer's refusal to allow the complainant to withdraw his pension benefits from the fund, pending the finalisation of the dispute between the complainant and the employer before the Bargaining Council. The parties have agreed to have the matter decided on papers, without oral argument or appearance.

Background

4. The complainant worked for the **employer** as a truck driver from July 2024 to March 12, 2025. He was dismissed by the employer for falling asleep behind the steering wheel while driving the employer's truck, which subsequently overturned. At the time of his dismissal, the complainant was a member of the fund by virtue of his employment.

5. On 10 July 2025, when the Adjudicator made its order as indicated in paragraph 1 above, the complainant had a fund credit of R30 241.0, with the last deduction for the provident fund in the amount of R2 427.40, having been made during February 2025.

6. The employer submitted before the Adjudicator that it was entitled to withhold the release of the complainant's withdrawal benefit until the finalisation of the dispute before the Bargaining Council. The Adjudicator rejected this submission and made the order as indicated above.

<u>Did the Adjudicator err in rejecting the employer's contention</u>?

7. The Adjudicator in making the order relied on the rules of the fund, in particular, rule 9 thereof. This rule deals with the "Termination of Services."

8. Paragraph 9.1 (1) of rule 9 provides as follows:
   "If a member's services with the employer is terminated before the normal retirement date (whether voluntarily by the member or as a result of retrenchment, redundancy, dismissal or any other reason), and he/she may then not retire in terms of the rules, <u>the member will become entitled to a benefit in terms of Part 9 only once he/she elects in writing in the prescribed format and subject to rule 9.2(2) and the relevant provisions of the special rules</u>…"

9. In terms of the fund's special rules, if a member's service with the employer is terminated before his/ her normal retirement date and he/she is not entitled to a retirement benefit from the Fund, he/she will be entitled to his/her member share.

10. The employer, in seeking to stay away from rule 9.1, puts it this way:
   "Rule 9.1 effectively removes any protection the applicant has as both the employer and employer's contribution must be paid out. Due to this rule and possible retrospective back pay order being made by commissioner, there is a risk to the applicant, and it was due to this that the argument was put forward that the

provident fund payment must be placed on hold until finalization of the labour matters. Such orders will effectively protect both the applicant and respondent, as a retrospective order is also applicable to the respondent, which there must be repayment of provident fund contributions. The respondent is not being prejudiced by placing the payment of the provident fund on hold until the finalization of labour matters".

11. Unfortunately for the employer, this issue must be decided in accordance with the provisions of the rule, and anything contrary thereto will be ultra vires. This has already been clarified by both the Supreme Court of Appeal and the Constitutional Court, referred to in paragraph 1 above.

12. Rule 9.1 is derived from the constitution of the fund. It does not afford the fund legal power or authority to act contrary to its provisions, and neither the Adjudicator nor this Tribunal may depart from the imperative in rule 9.1. The application is therefore destined to be dismissed.

13. Consequently, the application for reconsideration is hereby dismissed.

Signed on 14 November 2025 on behalf of the panel members.

__*Sgd M F Legodi*_____

JUDGE M F LEGODI