

THE FINANCIAL SERVICES TRIBUNAL

Case No. PFA24/2024

In the matter between:

EUNICE NOMASONGO MALINGA

Applicant

and

CLICKS GROUP NEGOTIATED PROVIDENT FUND

First Respondent

CLICKS GROUP SA (PTY) LTD

Second Respondent

THE PENSION FUNDS ADJUDICATOR

Third Respondent

Tribunal Panel: LTC Harms, Francis J, GM Goedhart SC

Appearance for the applicant: In person

Appearance for the first respondent: Mr S Harilal

Date of hearing: 26 September 2024

Date of decision: 1 October 2024

Summary: *Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 brought by the applicant pursuant to a determination by the third respondent dated 19 April 2024 in terms of section 30M of the Pension Fund's Act 24 of 1956.*

DECISION

Introduction

1. The applicant brings an application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 2017 (the FSR Act) pursuant to a determination made by the third respondent (the Adjudicator) in terms of section 30M of the Pension Funds Act, 24 of 1956 dated 19 April 2024. The Adjudicator dismissed the applicant's complaint of 5 October 2023 against the first respondent (the Fund) and the second respondent (the Employer).

The applicant's initial complaint

2. The crux of the applicant's complaint was that the Employer was deducting "100% for everything", in other words, that the Employer was deducting two pensions from her salary, being a deduction from the cost to company component of her salary as well as a deduction from her pensionable salary.
3. The applicant's payslips of February 2017 reflected a contribution by the Employer of R1 681.48 and an employee contribution of R1 300.11. The applicant sought an order that the Fund refund her with a total amount of

R322 976.30, being in respect of the Employer's contributions which, according to the applicant, were deducted from her salary but not paid to the Fund.

4. The applicant had lodged a complaint with the CCMA which was finalised on 27 September 2023. She then lodged a further complaint with the CCMA on 17 October 2023, which was dismissed.

The Fund's response to the initial complaint

5. The Fund submitted its response to the complaint on 24 November 2023. The response reflects that the applicant was employed from 3 January 2018, job grade was J6, on a cost to company basis. Cost to company is the amount it would cost the Employer to employ the applicant. The cost includes the applicant's basic salary, plus the costs of benefits provided to the employee by the Employer. The benefits are the Employer contributions towards retirement and medical aid, but excludes performance bonuses.
6. The Fund attached a payslip for the applicant for the period 1 June 2020 to 30 June 2020. The payslip reflects:

Total cost to company per month	R23 113.08
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Pensionable salary (75% of total cost the company)	R17 334.81
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Less: the Fund deductions from the pensionable salary being:

Employer contribution (9.7% of pensionable salary)	R 1 681.48
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Employee contribution (7.5% of pensionable salary)	R 1 300.11
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The total employee employer contribution of 9.7% of pensionable salary comprises:

Clicks NEG Prov ER is the employer deduction for the month	R 1 346.94
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Clicks NEG Prov FN-GLA is the cost of group life assurance	R 220.33
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Clicks NEG Prov FN is the cost of disability cover	R 105.74
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Clicks NEG Prov FN-FUN is the cost of funeral cover	R 8.47
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Total:	R 1 681.48
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7. The Fund further explained that the annexure (75% of AGP structure) refers to silent deductions which are not reflected on any payslips. However, the payslips correctly reflect the total cost to company less the deductions, being Provident Fund contributions, medical aid, tax and UIF.
8. The Fund confirmed that the applicant's deductions and nett salary paid is correct and that there was nothing due to the complainant.

The Adjudicator's determination

9. In her determination, the Adjudicator recorded Rules A.2.1 and A.2.2 of the Fund, which regulate the payment of contributions by members and participating employers. These rules read as follows:

"A.2.1 MEMBER

Every MEMBER is required to make monthly contributions to the FUND as set out in SCHEDULE. The contribution rates are set out in the SCHEDULE. Contributions are rounded off to the nearest cent and are deducted from the MEMBER's remuneration by the employer.

A.2.2 EMPLOYER

The EMPLOYER is required to make monthly contributions to the FUND in respect of every MEMBER as set out in the SCHEDULE. The contribution rate is set out in the SCHEDULE. Such are rounded off to the nearest cent."

10. In paragraph 5.7 of the determination, the Adjudicator set out that the Schedule stipulates employer contributions as 9.7% of members' monthly salary and member contributions as 7.5% of the members' monthly salary.
11. The Adjudicator was satisfied, on the information placed before her, that the contributions by the Employer and the applicant accorded with the Fund Rules and that there was nothing owing to the applicant.

Response to the reconsideration application

12. The Fund and the Employer responded to the application for reconsideration on 11 June 2024.
13. The applicant's first ground of reconsideration is that the Employer deducts 17.2% from both portions of her salary, being in respect of total cost to company as well as pensionable salary. The response is that the applicant is incorrect. As is evident from the payslip provided by the Fund in response to the initial complaint, only one deduction is made from the applicant's pensionable salary. The deduction comprises the employee contribution of 7.5% and the Employer contribution of 9.7%. This is also the amount which the Fund receives. The 2017 and 2020 payslips correctly reflect the deductions from the applicant's salary.
14. The applicant's second ground of reconsideration is that 7.5% is the pay-out from the pension fund on retirement, death or retrenchment. The Fund and Employer explained that the employee's contribution of 7.5% and of the Employer's contribution of 7.34% is invested towards retirement, death or retrenchment. This is a total of 14.84%. A total of 2.36% of the Employer's contribution is paid towards providing death, disability and funeral benefits, as well as the costs of administering the Fund.
15. The third ground of reconsideration is that 9.7% is for burial cover of R7500 on the death of the main member and that there is no contract that serves as proof of the main member's contribution. The Fund and Employer's response is that

the cost of funeral cover is R14.68, which is 0.07% of the applicant's pensionable salary. The applicant is therefore incorrect that 9.7% is for burial cover to a value of R7 500.

16. The applicant's fourth ground of reconsideration is that the 9.7% contribution is R350 000 in rand value. The applicant questioned why she should contribute so much for burial cover, which is less than R10 000. The Fund and Employer explained that the 9.7% is not in respect of the cost of funeral cover. The benefits provided are as follows:

16.1. Death - five times the applicant's annual pensionable salary. This is in addition to the 14.84% paid towards investment;

16.2. Disability - 75% of the applicant's monthly pensionable salary should she become unable to work due to illness or injury;

16.3. Funeral - family funeral benefit of R30 000. R30 000 for the main member and sliding scaled for spouse and children.

17. The applicant's fifth ground of complaint is that 71.2% contribution should be accumulating towards her provident fund, if indeed the Employer was making its contribution. The response to this ground is that 14.84% of the applicant's pensionable salary is accumulated towards her provident fund, which represents 86.27% of total contributions.

18. In respect of the applicant's sixth ground of reconsideration that the Employer failed to respond to the complaint, the Employer apologised for not providing a separate response to the original complaint and explained that the response to the Adjudicator by the Fund was also made on behalf of the Employer.

Applicant's oral submissions

19. The applicant stated that she is no longer employed by the Employer. At the time, she was employed as a registered nurse on a J6 grade and on a cost to company basis.
20. It was apparent from her oral submissions, that the applicant was dissatisfied with the manner in which her salary was structured from the commencement of her employment. She did not dispute that the deductions which reflected on her payslip were paid to the Fund. She considered that the structure of her salary was unfair.

Discussion

21. The applicant's complaint regarding the manner in which her salary was structured in terms of her employment contract is not an issue which falls within the jurisdiction of the Adjudicator or this Tribunal.
22. The issue before this Tribunal is whether the Adjudicator's determination is to be reconsidered as being either factually or legally incorrect.

23. The Adjudicator found that the deduction of contributions from the applicant's salary was in terms of the correct contribution rate, and was in accordance with her salary structure. The Tribunal is similarly satisfied that the deductions from the applicant's pensionable salary have been fully explained by the Fund and the Employer, accords with her employment contract and was paid to the Fund for the duration of her employment.
24. The applicant's complaint was correctly dismissed by the Adjudicator. There is no merit in the application for reconsideration.

Order

25. In the result the following order is made:

25.1. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 1 October 2024.

A handwritten signature in black ink, appearing to read 'Goedhart', is written over a horizontal line.

GM Goedhart SC