

THE FINANCIAL SERVICES TRIBUNAL

Case No. PFA62/2022

In the matter between:

FALTRANS CC T/A FREIGHT STAR

Applicant

and

THE PENSION FUNDS ADJUDICATOR

First Respondent

ZAKHELE PHINEAS MSIBI

Second Respondent

THE TRANSPORT SECTOR RETIREMENT FUND

Third Respondent

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.

DECISION

INTRODUCTION

1. The Applicant is Faltrans CC trading as Freight Star Logistics, a close corporation registered in accordance with the company laws of the Republic of South Africa and carrying on business at unit 14 C, Kyalami Industrial Park, 26 Kyalami Road, Westmead, Pinetown.
2. The First Respondent is the Pension Funds Adjudicator.
3. The Second Respondent is Zakhele Phineas Msibi, the complainant.
4. The Third Respondent is the Transport Sector Retirement Fund, administered by Salt Employees Benefits (Pty) Ltd.
5. This is an application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision taken by the First

Respondent in terms of section 30M of the Pensions Fund Act 24 of 1956 ("the PFA").

6. The parties have waived their right to a formal hearing, and this is the decision of the Tribunal.
7. Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") provides the basis for the Applicant to lodge this application for reconsideration and seek appropriate relief.

THE COMPLAINT

8. The Second Respondent's complaint filed with the First Respondent related to a delay in paying his withdrawal benefit by the Third Respondent. The Third Respondent provided the First Respondent with proof of payment of the withdrawal benefit, and this complaint fell away.
9. The First Respondent identified other issues of non-compliance related to whether the Applicant had failed to pay all provident fund contributions to the Third Respondent on behalf of the Second Respondent. The First Respondent concluded that the Applicant owed contributions to the Third Respondent on behalf of the Second Respondent for the period April 2009 and August to September 2010.
10. It is common cause that the periods under investigation fall outside the three-year time bar contemplated in section 30I of the PFA. The First Respondent maintains that the time bar is not applied uniformly and that the PFA provides that the provisions of the Prescription Act, 1969, related

to a debt, apply in the three-year period calculation. The First Respondent maintains that the Applicant wilfully prevented the Second Respondent from knowing that his contributions were unpaid for the period mentioned above to the Third Respondent. Therefore, the First Respondent believes that its authority to investigate the complaint remains extant. Accordingly, the First Respondent determined that the Applicant should pay the outstanding contributions to the Third Respondent, who would, in turn, pay the balance of the Second Respondent's withdrawal benefit.

THE APPLICANT'S CASE FOR RECONSIDERATION

11. The Applicant, as stated hereinabove, was aggrieved by the Determination of the Adjudicator and, for that reason, lodged this application for reconsideration. There were some technical difficulties with the filing of the application resulting in the application being filed some four days outside the prescribed period. The Applicant requests condonation for this, and I have no difficulty in granting this condonation.

12. After having considered the grounds of reconsideration listed by the Applicant, the following appear to be the essence of the grounds: -

12.1 By scrutinizing his payslip, the Second Respondent could have ascertained many years ago that contributions were not paid to the Third Respondent. Put differently, there was no wilful prevention on the Applicant's part. In the circumstances, the investigation is time-barred. In the light of the concession made by the First Respondent, discussed below, and the finding of this Tribunal, this is an issue the First Respondent must reconsider;

12.2 The Second Respondent had breaks in service, potentially leading

to the failure to pay contributions to the Third Respondent.

12.3 It is unreasonable for the First Respondent to have made a determination based on the Applicant's inability to provide documentation from more than a decade ago, which the Applicant highlights it's not required either in terms of the Companies Act, 2008 or the Tax Administration Act, 2011.

13. Before considering the grounds of reconsideration referred to hereinabove, I deem it appropriate to consider the First Respondent's submission of further evidence at this stage, as this, in my view, is dispositive of the application.

SUBMISSION OF FURTHER REASONS BY THE FIRST RESPONDENT

14. After the Applicant filed this application, the First Respondent filed Further Reasons in terms of rule 13.

15. In paragraph 3.1 of these Further Reasons, the First Respondent concedes that:

"The second respondent ought to have been aware of non-payment of provident fund contributions at the time and take (sic) action against the applicant."

16. The First Respondent furthermore indicates that it was:

"not in a position to work out the alleged period of the second respondent's break in service with the applicant."

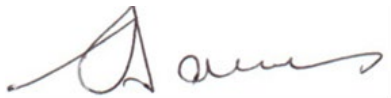
17. The First Respondent requests the Tribunal to refer the matter back for a fresh filing of additional information by both the Second Respondent and the Applicant. I am not sure what further information can be or will be filed.

18. Still, as foreshadowed in 12.1 above, the time bar in the light of the concession should specifically be reconsidered, and for this reason alone, I make the Order below.

ORDER

- (a) The determination is set aside, and the matter is referred to the PFA for reconsideration.

Signed on behalf of the Tribunal on 15 February 2023.

A handwritten signature in dark ink, appearing to read 'LTC Harms', enclosed within a thin rectangular border.

LTC Harms (deputy chair) o.b.o self and _____

PJ Veldhuizen (member of the Tribunal)