

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA32/2021

NATIONAL UNION OF METALWORKERS

OF SOUTH AFRICA

APPLICANT

and

N MPHIRIME

FIRST RESPONDENT

NUMSA STAFF PROVIDENT FUND

SECOND RESPONDENT

NBC FUND ADMINISTRATION SERVICES (PTY) LTD

THIRD RESPONDENT

THE PENSION FUNDS ADJUDICATOR

FOURTH RESPONDENT

Application for reconsideration of a PFA determination – audi rule - improper notification of complaint to respondent – determination set aside.

DECISION

The applicant applies for the reconsideration of a decision by the PFA under sec 30M of the Pension Funds Act 1956.

This application is in terms of sec 230 of the Financial Sector Regulation Act and the parties have waived their rights to a formal hearing.

It is unnecessary to enter the merits of the matter because it is apparent that the determination of the PFA was made without notice to the applicant.

Numsa, in its application, stated that:

**In terms of the attached determination, NUMSA was sent a notification giving it until 12 November 2020 to resolve the complaint. Follow up letters were then sent on 13 November 2020 giving NUMSA along with the other respondents in casu a further opportunity to respond by 21 November 2021.1**

**On further inspection of the email address contained in the section 30M determination and the forwarded email by the Mphirime to which the determination was attached ("annexure B"), it is abundantly clear that there is a clerical error on the e-mail address cited.**

**NUMSA's email address is recorded as [niskalas@numsa.co.za](mailto:niskalas@numsa.co.za). The correct email address is [niskalas@numsa.org.za](mailto:niskalas@numsa.org.za).**

**According to section 30A(2) of the PFA, "A complaint so lodged shall be properly considered and replied to in writing by the fund or the employer who participates in a fund within 30 days after the receipt thereof."**

**NUMSA, because of a clerical error, was simply not afforded this opportunity.**

The PFA, in the additional reasons, did not dispute these allegations. I wish to repeat that it is the duty of the PFA to ensure that an affected party receives proper notification of the proceedings. I use the word 'repeat' because this is not an isolated instance.

Not following due process costs time and money. The letters of the PFA which initiated the proceedings do not reflect an address or method of communication. That is simply not sufficient. Nothing prevents the PFA if it does not receive a response to make a call to the party concerned to determine whether the letter or email was received by the responsible party.

Any email system of any worth indicates if an email sent has not been delivered or opened. Why the staff does not check the delivery and opening of emails sent before preparing determinations is not understood.

ORDER: The determination is set aside and referred back to the PFA for reconsideration.

Signed on behalf of the Tribunal on 21 May 2021

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

LTC Harms (deputy chair)