



THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA15/2025

In a matter between:

PHILIP MEYBURGH

APPLICANT

and

**SYGNIA UMBRELLA RETIRMENT FUND
(PROVIDED SECTION)**

FIRST RESPONDENT

PARKER MANUFACTURING (PTY) LTD

SECOND RESPONDENT

THE PENSION FUND ADJUDICATOR

THIRD RESPONDENT

MA LUKHAIMANE N.O.

FOURTH RESPONDENT

TRIBUNAL PANEL: Judge LTC Harms, Judge Davis and KD Magano

Appearance for Applicant: Adv CJ Bekker

Appearance for Respondent: Adv Reineke

Date of Hearing: 20 August 2025

Date of Decision: 15 September 2025

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-withholding of pension fund benefit following allegations of misconduct and financial loss-application for reconsideration dismissed.*

DECISION

INTRODUCTION

1. This is an application for reconsideration, in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 (*"the FSR Act"*). The applicant challenges the Pension Fund Adjudicator's (*"the Adjudicator"*) decision to dismiss his complaint.
2. The central issue in this application for reconsideration involves the First Respondent, Sygnia Umbrella Retirement Fund's (*"the Fund"*) decision to withhold the Applicant's (*"Mr Meyburgh"*) pension benefits. This decision was made at the request of the Applicant's former employer, Parker Manufacturing (Pty) Ltd (*"Parker"*), which claims to have suffered financial losses due to the Applicant's alleged misconduct.
3. The Fund's decision to withhold the Applicant's benefit is governed by Section 37D(1)(b)(ii) of the Pension Funds Act, 1956¹. This section permits a registered

¹ **"37D. Fund may make certain deductions from pension benefits**

(1) A registered fund may—

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of—

fund to deduct an amount from a member's benefit to compensate an employer for a loss caused by the member's theft, dishonesty, fraud, or misconduct.

FACTUAL BACKGROUND

7. The applicant, Mr Meyburgh, was employed by Parker Manufacturing, for approximately 25 years as the Manufacturing Director. By virtue of this employment, he was a member of the Fund. His employment with Parker was terminated on 10 June 2024, following his summary dismissal for gross misconduct.
8. The dismissal followed a formal disciplinary hearing, which was the result of an investigation initiated in January 2024. This investigation was launched after Parker identified anomalies indicating significant stock losses in the manufacturing operations overseen by Mr Meyburgh. The investigation revealed that Mr Meyburgh had processed numerous unauthorised and fraudulent journal entries in the company's accounting system. Parker alleges that these actions were part of a deliberate strategy to conceal stock losses.
9. Parker's claim is supported by an interim audit report, which detailed instances of offsetting losses on certain items by creating fictitious or unrelated inventory entries to make the records appear balanced. For example, a loss in "packaging

(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—"

sheets" was offset by an increase in the stock value of "wood glue". Parker contends that this is clear evidence of manipulation.

10. These findings from the investigation and audit served as the basis for the formal disciplinary action against Mr Meyburgh. He was charged with the following charges:

- 10.1. Charge 1: That he, fraudulently and without authorisation, altered or adjusted company stock records to conceal stock losses.

- 10.2. Charge 2: That he failed to report stock losses to senior management and/or directors at the time the losses became known to him.

- 10.3. Charge 3: That he failed to follow various stock-related processes and procedures within the company, despite being aware of them.

11. It was also alleged that the above-mentioned conduct caused a financial loss to Parker.

12. During the hearing, Mr Meyburgh pleaded not guilty to all three charges. After hearing all the evidence, the chairperson of the disciplinary committee found him guilty of Charges 1 and 3, but not guilty of Charge 2. The chairperson found that the misconduct was so serious that it had caused a complete and irreparable breakdown in the trust relationship with his employer. Following these findings, Parker dismissed Mr Meyburgh.

13. On 1 July 2024, Mr Meyburgh contacted the Fund to withdraw his pension benefits. He requested an in-fund preservation. However, on 16 July 2024, his attorneys sent a letter demanding that the Fund process his claim without delay.
14. On 17 July 2024, Parker requested the Fund to withhold Mr Meyburgh's pension benefits in terms of section 37D(1)(b)(ii) of the Pensions Funds Act. Parker also indicated that it was preparing to initiate civil action and file an interdict application.
15. On 25 July 2024, Parker formally instituted a civil claim against Mr Meyburgh by issuing a combined summons for damages with the High Court. This claim sought payment of R3,926,261.00, plus interest and costs. The cause of action was based on allegations that Mr Meyburgh intentionally and fraudulently manipulated stock records to conceal losses.
16. Furthermore, Parker engaged external auditors to assess and quantify the full scope of the alleged financial loss it had suffered. This audit process resulted in an increase in the amount claimed. Based on a "Final Report" from the auditors, Parker then amended its particulars of claim by raising the amount claimed from R3,926,261.00 to R9,079,682.77.
17. On 29 July 2024, the Fund sent a summary of Parker's allegations to Mr Meyburgh. In this correspondence, the Fund also requested him to provide written representations addressing the claims. He was requested to share his version of events, specify any possible financial harm he might suffer, and include any other relevant information for the Fund's consideration.

18. On 1 August 2024, Parker launched an application for an interdict with the High Court seeking to prevent the Fund from releasing Mr Meyburgh's benefits pending the final determination of the civil action. The Fund received both these documents electronically.
19. Mr Meyburgh responded to the Fund on 13 August 2024. In his reply, he denied the allegations of fraud and dishonesty. He explained that the discrepancies in the stock records were due to issues with a new accounting system, inadequate staff training, and the pressure of a high-stress work environment. He also pointed out that Parker was aware of the adjustments he was making continuously but did not take any action. Additionally, he noted that, at the time of his submission, the employer had not yet formally initiated civil proceedings, and therefore, there was no valid reason for withholding his benefits.
20. A series of correspondences between the Applicant's legal representatives and the Fund highlighted a dispute over the timing of the service of the summons, the Fund's compliance with its duties under Section 37D, and a broader complaint about the delays in the overall legal process. The Applicant argued that the delays caused by Parker and the Fund were prejudicial, while the Fund maintained it was acting in accordance with its legal obligations and policies.
21. On 20 August 2024, the Fund made its final decision to withhold Mr Meyburgh's pension benefit. According to the Fund, there is a reasonable chance of success in the civil claim. Furthermore, the Fund confirmed that it had considered Mr Meyburgh's representations but, in light of the conflicting versions of events,

concluded that a court of law would need to determine the facts. The Fund's decision was conditional on its monitoring the progress of the legal proceedings, with an undertaking to revisit the matter if there were undue delays.

The Complaint

22. Mr Meyburgh lodged a formal complaint with the PFA against both the Fund and Parker. He argued that the Fund's decision to withhold his benefits was unlawful and unfair. He argued that the Fund failed to act with the necessary care and impartiality required of a fiduciary body when confronted with a dispute between an employer and a member.
23. Mr Meyburgh contended that he was not provided with all relevant information, particularly the full details of the civil action and interdict application, before being asked to make representations. He argued that this was a clear violation of the *audi alteram partem* principle, as it put him at a disadvantage and prevented him from mounting a comprehensive defence.
24. He further submitted that the Fund's decision was based on unsubstantiated allegations from Parker, which at the time of the decision had been articulated in a defective summons. He argued that the Fund acted unreasonably by choosing to withhold his benefits when Parker had not yet established a clear *prima facie* case.
25. Lastly, Mr Meyburgh highlighted the financial prejudice he faced as an unemployed individual and the sole breadwinner for his family. He argued that the Fund failed

to properly consider this hardship, noting that its decision was based on an unfounded assumption that his initial request for in-fund preservation indicated he did not have an urgent need for the funds.

26. In response to the complaint, Parker denied all allegations of wrongdoing. It was argued that the Fund had followed due process and acted impartially throughout the matter. According to Parker, it was Mr Meyburgh who had committed gross misconduct, dishonesty, and fraud, and that its legal actions were a direct result of the significant financial loss it had incurred. Additionally, Parker submitted an updated audit report, which increased the claimed damages to R9,079,682.77.
27. The Fund, in its submissions, defended the lawfulness and fairness of its decision-making process. It argued that it had correctly exercised its discretion in accordance with Section 37D of the Pension Funds Act and established legal precedents. The Fund stated that it had considered Mr Meyburgh's representations but concluded that the conflicting versions of events could only be resolved by a court.

The Adjudicator's Determination and reasons

28. The Adjudicator dismissed Mr Meyburgh's complaint, stating that the Fund's decision to withhold the retirement benefit was lawful and within its authority.
29. In its reasoning, the Adjudicator cited legal precedents, including the **Highveld Steel and Vanadium Corporation Ltd v Ooshuizen**² and the unreported case of

² [2009] 2 All 225 (SCA).

SA Metal Group (Pty) Ltd v Deon Jeftha and Two Others.³ These cases confirm

that a fund has the discretion to withhold a member's benefits while legal proceedings are ongoing. However, this authority is not automatic; the fund must act with care, impartiality, and fairness while considering the competing interests of both the employer and the member.

30. The Adjudicator found that the Fund met these requirements. The Adjudicator also noted that the Fund provided Mr Meyburgh with an opportunity to make representations before arriving at a final decision. A significant finding was that there was "no undue delay" by the employer in initiating civil proceedings, as the summons was issued promptly after the Fund requested confirmation of such action. The Adjudicator concluded that this showed the employer had a genuine and actionable claim, thus establishing a *prima facie* right to request the withholding of the benefit.
31. Ultimately, the Adjudicator was satisfied that the Fund had adequately balanced the interests of both parties. It determined that because the Fund had followed the correct procedural steps, its decision to withhold the benefit pending the completion of the civil litigation was justified. Consequently, the Adjudicator dismissed the complaint and found no reason to interfere with the Fund's actions.

The reconsideration application

32. Mr Meyburgh's grounds of reconsideration are summarised as follows:

³ Case no 20298/2018.

- 32.1. The Fund and the Adjudicator failed to uphold the principles of procedural fairness. Specifically, he argues that the Fund's decision to withhold his benefits was made without granting him access to the full legal proceedings initiated by the employer, thereby violating the *audi alteram partem* rule.
- 32.2. The Fund's decision was an unlawful and irrational exercise of its discretion, as it acted *ultra vires* its own policies and the law. He argues that the Fund's board improperly accepted the employer's unsubstantiated allegations without conducting a proper investigation into the merits of the claim or the accompanying legal proceedings.
- 32.3. The Fund failed to weigh the conflicting interests of the parties involved adequately. He argues that the Fund did not sufficiently consider the substantial financial prejudice he would endure as an unemployed individual and the sole breadwinner. This hardship, he asserts, is immediate and tangible, whereas the employer's potential loss is speculative and reliant on ongoing litigation. According to Mr Meyburgh, this balancing process required the Fund to approach the situation with greater caution.
- 32.4. Lastly, Mr Meyburgh argues that Parker's sluggish conduct in pursuing its legal claims is a key issue that should have been considered. He notes that Parker's inaction in the interdict application, an action the Fund undertook to monitor, has led to prolonged and indefinite hardship for him. He maintains that this delay reflects the employer's lack of a serious and genuine intention to pursue its claims.

Parker's point in limine

33. In its heads of argument and during the proceedings, Parker raised a *point in limine* based on the legal principle of *lis pendens*. Parker argued that the Tribunal should not hear this matter because the issue of withholding Mr Meyburgh's pension benefits is already the subject of an interdict application that Parker had instituted in the High Court. By raising this preliminary point, Parker contended that the Tribunal's jurisdiction to hear the matter should be deferred because the issues raised in the interdict application were effectively identical to those before this Tribunal.
34. The Tribunal dismissed Parker's point in limine because Parker itself initiated the statutory process by exercising its rights under Section 37D of the Pension Funds Act. This established a procedure that, if followed, would inevitably lead to the Tribunal if either party was dissatisfied with the outcome. The Tribunal held that this statutory procedure does not cease merely because a party opts to pursue a parallel interdict. Furthermore, by actively participating in the Pension Fund Adjudicator's proceedings without raising an objection to its jurisdiction, Parker demonstrated its acceptance of the statutory process. Parker's own conduct made its *point in limine* unsustainable.

TRIBUNAL'S ANALYSIS AND FINDINGS

35. In considering the application for reconsideration, the Tribunal will now individually address each of Mr Meyburgh's grounds of reconsideration.

i. **Alleged Violation of the *Audi Alteram Partem* Principle**

36. The *audi alteram partem* rule requires a pension fund to give a member a fair hearing before making a decision that affects their benefits. The Fund's own rules reinforce this, with Rule 64(c) placing a duty on the Board to ensure that adequate and appropriate information is communicated to members. Similarly, its policy on withholding benefits explicitly requires the Board to contact the member to present the employer's case and provide an opportunity for a response.
37. After reviewing the evidence, the Tribunal finds that the Fund complied with the requirements of the *audi alteram partem* rule. The record clearly shows that on 29 July 2024, the Fund engaged with Mr Meyburgh (through his legal representatives). In that correspondence, it provided a summary of the employer's allegations and explicitly invited a response. The Applicant took advantage of this opportunity by submitting his representations.
38. The Fund decided to withhold Mr Meyburgh's pension benefit on 20 August 2024, after considering his representations. This timeline shows that the Fund made its decision only after giving Mr Meyburgh a chance to respond to Parker's allegations.
39. The process was not limited to this single exchange. The record shows a continuous back-and-forth correspondence between the Fund and Mr Meyburgh's legal representatives that also formed part of the *audi alteram partem* process. This dialogue included letters from Mr Meyburgh that further demonstrated his engagement with the Fund's concerns and afforded him multiple opportunities to state his case. Although Mr Meyburgh may have been dissatisfied with the

completeness of the information provided, he was given a fair hearing and the opportunity to respond to the allegations against him before a final decision was made.

40. This ground of reconsideration is therefore dismissed.

ii. **Flawed Exercise of Discretion and Ultra Vires Conduct**

41. The Fund's rules give the Board of Trustees the authority to withhold a member's benefits, but principles of procedural fairness govern this power. Both the rules and the Fund's policy require that this authority be exercised impartially, with due diligence, and in a balanced manner. Legally, the Board must carefully examine the employer's claim, weigh the employer's reasonable chances of success in court against the potential financial harm to the member, and actively seek the member's input before making a final decision.

42. The correspondence and submissions from the Fund indicate that it believed it had appropriately exercised its discretion by considering all relevant information. A foundational principle of a claim under Section 37D, as established in **Highveld Steel and Vanadium Corporation Ltd v Oosthuizen**, is that the employer must quantify the financial loss they have allegedly suffered. The law acknowledges that initial claims may be based on preliminary findings and are often subject to further investigation and auditing. Consequently, the claimed amount can and may be revised as the legal and auditing processes unfold.

43. The Fund needed to respond to the projected nature of Parker's claim, as specifically stated in the audit report. Its decision to withhold the full fund credit was an effort to secure the entire value of the potential claim, which included estimated legal costs, as allowed by its policies. Therefore, Mr Meyburgh's claim that the withholding was *ultra vires* because the initial amount exceeded the employer's original claim does not stand up to scrutiny. The Fund's actions were well within its authority and reflected a reasonable and proactive exercise of its discretion to secure the full, albeit variable, amount of the employer's potential claim.
44. This ground of reconsideration is also dismissed.

iii. Failure to Properly Balance Competing Interests and Consider Prejudice

45. Mr Meyburgh contends that the Fund did not give sufficient weight to the financial prejudice he would suffer as an unemployed individual. He further argues that the Fund's decision effectively endorsed the employer's dilatory conduct in prosecuting the legal proceedings, thereby subjecting him to prolonged and unnecessary hardship.
46. Based on a review of the evidence, the Tribunal finds that the Fund's exercise of discretion properly considered the competing interests and the potential prejudice to the Applicant. A key factor in the Fund's assessment was Mr Meyburgh's own conduct. His initial withdrawal form requested in-fund preservation, which indicated a lack of immediate need for a cash payout. Therefore, the Fund was justified in viewing his subsequent claims of urgent financial hardship as inconsistent with his

original request. This inconsistency undermined the credibility of his assertion that he would suffer imminent and severe prejudice from the withholding of his benefits.

47. This ground of reconsideration is also dismissed.

iv. The Employer's Dilatory Conduct

48. The next ground for reconsideration is Mr Myburgh's argument that Parker has demonstrated dilatory conduct in prosecuting the legal proceedings. He contends that, as the *dominus litis* in both the civil summons and the interdict application, Parker has failed to advance its case diligently, resulting in an unreasonable and prejudicial delay.

49. Based on a review of the evidence, this ground for reconsideration must fail because the Fund's decision to withhold benefits was made on 20 August 2024, well after it had set a 30-day deadline for Parker to initiate legal proceedings. Parker met this deadline, thereby satisfying the Fund that its claim was actively being pursued. The alleged delays in the High Court relate to events that occurred after the Fund had already made its decision. The Fund's commitment to monitor the ongoing litigation demonstrates its dedication to maintaining a fair process rather than endorsing delays (if any).

50. This ground of reconsideration is also dismissed.

ORDER

51. As a result, the following order is made:

51.1. The application for reconsideration is dismissed.

51.2. The Pension Fund Adjudicator's Determination is upheld.

Signed on behalf of the Tribunal panel.

___ *Sgd Adv KD Magano* ___

KD MAGANO