

THE FINANCIAL SERVICES TRIBUNAL

Case no.: PFA81/2024

In the matter between:

MOTSIRI PHINEAS MOPAI

Applicant

and

**REMATA COMMUNICATIONS AND
PRINTERS PRODUCTION HOUSE (PTY) LTD**

First Respondent

**FUNDSATWORK UMBRELLA PROVIDENT FUND
C/O MOMENTUM METROPOLITAN LIFE**

Second Respondent

THE PENSION FUNDS ADJUDICATOR

Third Respondent

DECISION

Tribunal: LTC Harms (Chair), PR Long

Date of decision: 30 April 2025

INTRODUCTION

1. The applicant was employed by the first respondent (*'the employer'*) since 1992. On 1 June 2013 the applicant was registered as a member of the second respondent (*'the fund'*). On or about 30 April 2024 the applicant retired from his employment. On or about 26 June 2024 the fund paid a retirement benefit to the applicant in the sum of R81 400.17.

2. On 15 February 2024 the applicant lodged a complaint with the third respondent, the Adjudicator, (herein '*the Office*') wherein the applicant claims, in essence, that the employer has, since the applicant became a member of the fund on 1 June 2013, failed to pay to the fund its contribution of the applicant's retirement benefit and that the employer has in fact deducted the contribution from the applicant's 'basic salary'.
3. The Office ordered the employer to, *inter alia*, pay to the fund the outstanding contributions '*for August 2020 to September 2021*' in the amount of R7 747.32.
4. The applicant applies to this Tribunal for an appeal of the decision of the Office. However, this Tribunal does not conduct appeals but reconsideration applications in terms of section 230 of the Financial Sector Regulation Act 9 of 2017. This decision is therefore a reconsideration of the decision of the Office.
5. The parties have agreed that the application for reconsideration may be decided on the papers filed of record.

THE FINDINGS OF THE OFFICE OF THE ADJUDICATOR

6. Both the employer and the fund made submissions in response to the applicant's complaint before the Office. According to the fund the employer was entitled to apply to the trustees of the fund from 1 March 2020 for a suspension of the payment of fund contributions towards the members' retirement benefits for, *inter alia*, a maximum period of twenty-four months in circumstances where the employer is unable to pay contributions on account of the national state of

disaster. The employer was, however, required to pay all required expenses, fees and costs to the fund *'provided that if contributions are deducted from the members' salaries or wages, the participating employer must pay it to the fund to be applied towards the members' retirement benefits.'*

7. The employer applied for the suspension on account of the declaration of the national state of disaster. The board of trustees of the fund approved the employer's application for the suspension of the payment contribution for a period of 120 days from 1 April 2020 until 1 August 2020. However, the employer failed to pay its contributions from August 2020 to September 2021 i.e., after the suspension period.
8. In the result, the Office found that the employer is liable to pay to the fund the (employer's) contributions owed for the period from August 2020 to September 2021.
9. The Office found that the employer is liable to pay to the fund the outstanding contributions for the period from 1 August 2020 to September 2021. Whilst this finding is correct because the suspension period had lapsed on 1 August 2020 and the employer was therefore liable to pay its contributions to the fund after the lapse of the suspension, the Office failed to determine the applicant's complaint which was that the employer itself made no contribution to the fund from 1 June 2013 until the applicant's retirement on 30 April 2024 and that *all* contributions made were in fact *employee* contributions deducted from the applicant's basic salary.

10. In terms of the fund rules, the applicant is liable to pay 0.00% of his fund salary as a contribution and the employer is liable to pay a contribution of 6.39% of the applicant's fund salary.¹ This the employer and the fund concedes.
11. In its submissions to the Office, the employer concedes to deducting the fund contributions from the applicant's '*basic salary*' but claims that the contribution '*is then converted into an employer contribution towards the pension fund. This structure not only ensures compliance with regulatory requirements but also offers tax benefits to the employees. This is clearly reflected in both the fund structure report (Annexure A) and the member benefit statement (Annexure B), from inception of the fund*'. To the employer the applicant's complaint is as a result of a misunderstanding of the fund structure.
12. Notably, annexures A and B were not annexed to the submissions and did not form part of the record which served before the Tribunal.
13. The tax reforms for pension fund contributions and provident fund contributions were implemented from 1 March 2016. Prior to 1 March 2016, the member (i.e., employee) was not taxed on the employer contribution, nor did he qualify for a tax deduction on this contribution. From 1 March 2016, both employer and employee contributions are taxable fringe benefits and are *deemed* contributions in the hands of the employee i.e., they are *deemed* employee contributions and

¹ The fund rules define a '**fund salary**' as: '*A member's basic annual salary or its equivalent if paid other than annually, plus such other emolument as specified by the participating employer and agreed with the fund.*'

tax deductible for the benefit of the member. Applicable tax laws provide that any contribution the employer makes is treated as a contribution made by the member.²

14. This does not however mean that the employer can deduct its contribution from the employee's basic salary as this would constitute an employee's contribution, not an employer's contribution. The implementation of the tax reform merely means that for tax purposes the employer's contribution is *deemed* an employee contribution.
15. As stated, in terms of the fund rules the applicant is a category 1 employee. Accordingly, the *employer* was liable to contribute 6.39% to the fund and the applicant as *employee* 0.00%. The applicant's salary slips show that the pension fund contribution was deducted from his basic salary and is not an item listed under '*company contributions*' which is where it would ordinarily appear when an employer pays a contribution to a pension fund on behalf of its employee.
16. If the contributions are in fact employee contributions, then the deductions were irregular and in non-compliance with the fund rules. It may be that what the employer wished to convey was that what was termed 'basic salary' was COT, namely cost to company, and it may be that this is how the Office understood it. However, that is unclear from the papers before us.

² See: Section 11F and Paragraph 2(4)(a), (b) and (bA) of the Fourth Schedule of the Income Tax Act 58 of 1962.

17. In the result, it is uncertain whether the Office investigated whether the contributions paid to the fund were in accordance with the fund rules and were in fact employer contributions and not employee contributions. The Office must also consider the time bar in relation to these contributions which were indicated on the pay slips.

ORDER

18. Accordingly, we make the following order:

- a) The application for reconsideration is upheld;
- b) The decision of the third respondent is set aside, and the matter is remitted to the third respondent for further consideration.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS THE 30th DAY OF APRIL

2025.



PR LONG