

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA29/2023

In the matter between:

PAULINAH NTOMBIZODWA THANDI NONGQO MASEKO

Applicant

and

LEATHER INDUSTRY PROVIDENT FUND

First Respondent

FUNDSATWORK UMBRELLA PROVIDENT FUND

Second Respondent

BADER SA (PTY) LTD

Third Respondent

THE PENSION FUNDS ADJUDICATOR

Fourth Respondent

Tribunal Members:

MG Mashaba SC (Chair), PR Long and W Ndinisa

Appearance for the Applicant:

In Person

Appearance for the Respondents: No appearance

Summary:

Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision of the Pension Fund Adjudicator

DECISION

[1] This is an application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 of the decision of the fourth respondent, the Pension Funds Adjudicator, dated 18 May 2023.

[2] The applicant was employed by Bader SA (Pty) Ltd (“Bader SA”) from 2 April 1996 to 15 April 2022. When the applicant left the employ of Bader SA she was a member of FundsAtWork Umbrella Provident Fund. Prior to its participation in the FundsAtWork Umbrella Provident Fund, Bader SA participated in a fund administered by Alexander Forbes. Following an approval for transfer in terms of section 14 of the Pension Funds Act 24 of 1956 in 2005, Bader SA was transferred to the Rainmaker Plus Provident Fund. Following approval of another section 14 transfer in 2013, Bader SA was transferred to the FundsAtWork Umbrella Provident Fund (“the Fund”).

[3] The applicant’s principal complaint is that she disputes the quantum of the withdrawal benefit paid to her by the Fund in that it does not correspond with the statements she has from the funds which she previously participated in. The applicant, when completing the Pension Funds Adjudicator complaint form articulated her complaint in the following terms:

“I started working for Bader SA from 02 April 1996. Our Provident fund was with Bargaining Council of Leather Industry. They transferred our provident fund to Alexander Forbes in 31 August 2005 and I was transferred again from Alexander Forbes to Metropolitan and transferred again Momentum.

I am not [sic] satisfied with the fact that I don’t know where my money is. I want to know what happened with my money in the Leather Industry Provident Fund,

Alexander Forbes and Metropolitan. Please investigate for me and if there's any money I want it to be paid out. All of it.”¹

[4] However, in her reply in the complaint before the Pension Fund Adjudicator, the applicant stated the following:

“1. I am not satisfied with the amount reflected in the contribution schedule provided by Momentum. These amounts are not a true reflection of the values from 2 previous funds.

2. The information regarding the transfer values do not correspond with the information I was provided with.

3. The Leather Industry Bargaining Council indicated that my money was withdrawn in 2009. I was advised to call Alexander Forbes to get a release letter but I cannot get through to them when calling to see exactly where my money went to.

4. I need a full account of money from my previous funds. I'm not satisfied since money from 1996 until 2013 is not accounted for.²

[5] Furthermore, the second complaint by the applicant, as per her application for reconsideration before this Tribunal, is that she did not receive the benefit which accrued in April 2022 after she left her employment with Bader SA in that Bader SA, based on her enquiries to Momentum, did not pay over the contribution for that month.³ However, in her reply to the complaint before the Pension Fund Adjudicator, the applicant contends that the April 2022 contribution was paid

¹ Pages 2-3 of Part B of the Tribunal Record.

² Page 20 of Part B of the Tribunal Record.

³ Page 4 of Part A of the Tribunal Record.

but that it was paid late by Bader SA and “*is not the full contribution amount deducted from [her] salary.*”⁴

[6] Before the adjudicator Momentum provided a written response to the applicant’s compliant on behalf of the Fund. Accordingly, Momentum, in addition to its response, provided a copy of the applicant’s contribution allocation statement from the Fund. The first date reflected in the statement is 1 February 2013. The first contribution made to the Fund was on 14 May 2013. The submissions made by Momentum together with the statement provided shows the following:

- a. The applicant’s benefit from Alexander Forbes was transferred to the Rainmaker Plus Provident Fund after the section 14 transfer was approved by the Financial Sector Conduct Authority.
- b. On 1 October 2006, two amounts were transferred to the Rainmaker Plus Provident Fund: R12 990.25 as the applicant’s contribution; and R9 512.18 as the employer’s contribution (Bader SA’s contribution).
- c. The applicant’s ‘transfer in value’ was received by the Rainmaker Plus Provident Fund on 4 January 2014.
- d. Accordingly, two amounts of R89 703.47 and R16 010.77 were ‘transferred in’ on 4 April 2014.
- e. The applicant withdrew her benefit from the Fund in August 2022 which was paid to her on 1 September 2022 in an amount of R268 752.02.
- f. Part of the documents provided was also a ‘transfer statement’ from Alexander Forbes evincing the applicant’s ‘total fund credit on transfer’ as

⁴ Page 20 of Part B of the Tribunal Record.

R20 220.31 on 31 August 2005 from 1 August 2000. The document also reflects 'take on balances' dated 1 August 2000 which are factored into the 'total fund credit on transfer'.⁵ The 'take on balances' correspond with the closing balances reflected in the provident fund benefit statement from the National Bargaining Council of the Leather Industry of SA of which the applicant was a member and which fund was administered by Alexander Forbes.

[7] The pension fund adjudicator in her ruling of 18 May 2023 made the following findings:

"5.10 The submissions before the Adjudicator indicate that the complainant was paid her benefit in the amount of R268 747.94 on 01 September 2022. The benefit paid comprised of the transfer in value of R88 458.39 and R16 010.79 and the contributions received on behalf of the complainant for February 2013 to March 2022.

5.11 On the evidence submitted, the Adjudicator is satisfied that the complainant was paid her full withdrawal benefit. The employer complied with rules 3.1 and 3.2 of the fund. Therefore, the complaint cannot succeed."

[8] The pension fund adjudicator, so it appears, based her conclusions on the contents of the aforesaid statement which details the applicant's retirement contributions from 1 February 2013 until its closure on 30 August 2022⁶ as well as a statement from Bader SA detailing its and the applicant's monthly contributions to the Fund. Based on the statements it is apparent that the

⁵ Page 10 of Part B of the Tribunal Record.

⁶ Page 80- 96 of Part B of the Tribunal Record.

applicant and Bader SA have been making monthly contributions towards the Fund.

[9] Upon reading of the papers an impression is created that the applicant is acting under the premise that the paid-up amount of R268 784.94 represented her monthly contributions and her employer's monthly contributions from the period 1 February 2013 to 30 August 2022. This is precisely the reason the applicant in her further explanation in her reply before the Pension Fund Adjudicator submitted the following:

“4 *I need a full account of money from my previous funds. **I'm not satisfied since money from 1996 until 2013 is not accounted for.***

5. *Also, I left the employment on 8 April 2022 but the contribution to the fund for April 2022 **is little and it was paid late. It is not the full contribution amount deducted from the salary.**” (own emphasis)*

[10] The pension fund adjudicator in paragraph 5.10 of her ruling concludes that the benefit in the amount of R268 747.94 paid to the applicant on 1 September 2022 comprised of the transfer in the value of R88 458.39 and an amount of R16 010.79 and contributions received on behalf of the complainant for February 2013 to March 2022. She went further to state that she was satisfied that the applicant was paid her full withdrawal benefit.

[11] During the hearing of this matter, it became apparent that the applicant who at the time of the hearing was unrepresented, mentioned other grounds in support of her application for reconsideration which were not pleaded in the application. She also submitted additional documents which were not part of her application for reconsideration.

- [12] During our lengthy exchange with the applicant she indicated that there were additional documents which were not part of the application which she requested an indulgence to postpone the matter so she could incorporate those additional documents into the record bundle. It also became clearer during applicant's presentation that the Tribunal could not make a decision as at the time of the hearing without affording the applicant an opportunity to augment her papers and crystallise her grounds for reconsideration with proper clarity.
- [13] As a result of this exchange the Tribunal issued a directive and postponed the matter sine die. The applicant was directed, amongst other things, to file an application for the admission of further evidence by no later than 27 November 2023 setting out an explanation as to why the evidence was not served before the fourth respondent and a full description of the evidence had to be submitted and its relevance to the application for reconsideration. The fourth respondent was directed to make written submissions on the issue of jurisdiction to assist the Tribunal in its decision. The second respondent was directed to make written submission indicating the source/s of the transfer amounts of R86 458.39 and R16 010.79 and to indicate which period of the applicant's employment did these amounts apply.
- [14] The applicant has failed to comply with the directive in as far as it relates to her and did not file an application to augment her papers. However, in compliance with our directive, the second respondent filed further submissions. These submissions do not present anything new and accord with the facts which we have already dealt with in this decision.

- [15] The fourth respondent, in compliance to the directive, filed further submissions dealing with the question of jurisdiction. In summary, the fourth respondent submits that section 14 transfers are subject to approval by the Authority. In terms of section 14(1)(c) of the Pension Funds Act, if the Authority is satisfied that a section 14 transfer is reasonable, equitable and accords full recognition to the rights and reasonable benefit expectations of the members, it may approve the scheme.
- [16] Accordingly the fourth respondent had no jurisdiction to investigate and determine matters in which a transfer approval had been granted by the Authority in terms of section 14 of the PF Act. The fourth respondent could therefore not comment on an approved transfer value of a benefit, and a person aggrieved thereby was entitled to approach the Authority if such party was dissatisfied with the transfer amount. In this regard, the Authority is empowered by section 14(6) of the PF Act to withdraw or amend its certificate under the circumstances mentioned therein. Accordingly, the Adjudicator could only have regard to the benefits relating to the period between 1 February 2013 until the applicant left the employ of Bader SA in April 2022.
- [17] On the issue of jurisdiction, the transfer of member benefits is provided for in section 14(1) of the Pension Funds Act. This section deals with the transfer of assets, including member benefits. The Financial Sector Authority approved the section 14 transfer and issued a certificate in terms of section 14(1)(e), confirming that it was satisfied that the provisions of section 14(1)(a) to (d) were satisfied. As was held by this Tribunal:

“The PFA cannot ‘overrule’ or change a transfer of assets between funds under sec 14 whether directly or indirectly, and the PFA cannot exercise a discretion on behalf of the Board and order it to transfer assets not permitted by a sec 14(1) certificate.”⁷

[18] Therefore, the applicant’s complaint concerning contributions made prior to 1 February 2013 does not fall within the jurisdiction of the Pension Funds Adjudicator and the applicant’s remedy concerning those contributions lie elsewhere i.e. to the Authority.

[19] On the merits, we are satisfied that the Pension Fund Adjudicator was correct in its finding that the applicant was paid her full withdrawal benefit in the period between 1 February 2013 to 1 September 2022. This much is apparent from the various statements provided. The applicant has not produced any document or other evidence which gainsays the finding.

[20] In the circumstances the application for reconsideration cannot succeed and stand to be dismissed.

ORDER:

(a) The application for reconsideration is dismissed.

SIGNED at PRETORIA on 7 of MARCH 2024 on behalf of the Tribunal.

⁷ The Board of the NAMPAK Group Pension Fund v NAMPAK Contributory Provident Fund and Another (PFA 40/2022) at para 37.



MG Mashaba SC (Chair)

With the Panel also consisting of:

PR Long

W Ndinisa.